
SUBSTITUTE HOUSE BILL 2431

State of Washington **66th Legislature** **2020 Regular Session**

By House Public Safety (originally sponsored by Representative Klippert)

READ FIRST TIME 02/03/20.

1 AN ACT Relating to criminal offenses involving watercraft;
2 amending RCW 79A.60.010, 79A.60.040, 79A.60.050, 79A.60.060,
3 79A.60.190, 79A.60.700, and 46.61.506; reenacting and amending RCW
4 9.94A.515; adding a new section to chapter 79A.60 RCW; and
5 prescribing penalties.

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

7 **Sec. 1.** RCW 79A.60.010 and 2005 c 392 s 2 are each amended to
8 read as follows:

9 Unless the context clearly requires otherwise, the definitions in
10 this section apply throughout this chapter.

11 (1) "Accredited course" means a mandatory course of instruction
12 on boating safety education that has been approved by the commission.

13 (2) "Boat wastes" includes, but is not limited to, sewage,
14 garbage, marine debris, plastics, contaminated bilge water, cleaning
15 solvents, paint scrapings, or discarded petroleum products associated
16 with the use of vessels.

17 (3) "Boater" means any person on a vessel on waters of the state
18 of Washington.

19 (4) "Boater education card" means a card issued to a person who
20 has successfully completed a boating safety education test and has

1 paid the registration fee for a serial number record to be maintained
2 in the commission's database.

3 (5) "Boating educator" means a person providing an accredited
4 course.

5 (6) "Carrying passengers for hire" means carrying passengers in a
6 vessel on waters of the state for valuable consideration, whether
7 given directly or indirectly or received by the owner, agent,
8 operator, or other person having an interest in the vessel. This
9 shall not include trips where expenses for food, transportation, or
10 incidentals are shared by participants on an even basis. Anyone
11 receiving compensation for skills or money for amortization of
12 equipment and carrying passengers shall be considered to be carrying
13 passengers for hire on waters of the state.

14 (7) "Certificate of accomplishment" means a form of certificate
15 approved by the commission and issued by a boating educator to a
16 person who has successfully completed an accredited course.

17 (8) "Commission" means the state parks and recreation commission.

18 (9) "Darkness" means that period between sunset and sunrise.

19 (10) "Environmentally sensitive area" means a restricted body of
20 water where discharge of untreated sewage from boats is especially
21 detrimental because of limited flushing, shallow water, commercial or
22 recreational shellfish, swimming areas, diversity of species, the
23 absence of other pollution sources, or other characteristics.

24 (11) "Guide" means any individual, including but not limited to
25 subcontractors and independent contractors, engaged for compensation
26 or other consideration by a whitewater river outfitter for the
27 purpose of operating vessels. A person licensed under RCW 77.65.480
28 or 77.65.440 and acting as a fishing guide is not considered a guide
29 for the purposes of this chapter.

30 (12) "Marina" means a facility providing boat moorage space,
31 fuel, or commercial services. Commercial services include but are not
32 limited to overnight or live-aboard boating accommodations.

33 (13) "Motor driven boats and vessels" means all boats and vessels
34 which are self propelled.

35 (14) "Motor vessel safety operating and equipment checklist"
36 means a printed list of the safety requirements for a vessel with a
37 motor installed or attached to the vessel being rented, chartered, or
38 leased and meeting minimum requirements adopted by the commission in
39 accordance with RCW 79A.60.630.

1 (15) "Muffler" or "muffler system" means a sound suppression
2 device or system, including an underwater exhaust system, designed
3 and installed to abate the sound of exhaust gases emitted from an
4 internal combustion engine and that prevents excessive or unusual
5 noise.

6 (16) "Operate" means to steer, direct, or otherwise have physical
7 control of a vessel that is underway.

8 (17) "Operator" means an individual who steers, directs, or
9 otherwise has physical control of a vessel that is underway or
10 exercises actual authority to control the person at the helm.

11 (18) "Observer" means the individual riding in a vessel who is
12 responsible for observing a water skier at all times.

13 (19) "Owner" means a person who has a lawful right to possession
14 of a vessel by purchase, exchange, gift, lease, inheritance, or legal
15 action whether or not the vessel is subject to a security interest.

16 (20) "Person" means any individual, sole proprietorship,
17 partnership, corporation, nonprofit corporation or organization,
18 limited liability company, firm, association, or other legal entity
19 located within or outside this state.

20 (21) "Personal flotation device" means a buoyancy device, life
21 preserver, buoyant vest, ring buoy, or buoy cushion that is designed
22 to float a person in the water and that is approved by the
23 commission.

24 (22) "Personal watercraft" means a vessel of less than sixteen
25 feet that uses a motor powering a water jet pump, as its primary
26 source of motive power and that is designed to be operated by a
27 person sitting, standing, or kneeling on, or being towed behind the
28 vessel, rather than in the conventional manner of sitting or standing
29 inside the vessel.

30 (23) "Polluted area" means a body of water used by boaters that
31 is contaminated by boat wastes at unacceptable levels, based on
32 applicable water quality and shellfish standards.

33 (24) "Public entities" means all elected or appointed bodies,
34 including tribal governments, responsible for collecting and spending
35 public funds.

36 (~~(25) ("Reckless" or "recklessly" means acting carelessly and
37 heedlessly in a willful and wanton disregard of the rights, safety,
38 or property of another.~~

39 (-26-)) "Rental motor vessel" means a motor vessel that is legally
40 owned by a person that is registered as a rental and leasing agency

1 for recreational motor vessels, and for which there is a written and
2 signed rental, charter, or lease agreement between the owner, or
3 owner's agent, of the vessel and the operator of the vessel.

4 ~~((27))~~ (26) "Sewage pumpout or dump unit" means:

5 (a) A receiving chamber or tank designed to receive vessel sewage
6 from a "porta-potty" or a portable container; and

7 (b) A stationary or portable mechanical device on land, a dock,
8 pier, float, barge, vessel, or other location convenient to boaters,
9 designed to remove sewage waste from holding tanks on vessels.

10 ~~((28))~~ (27) "Underway" means that a vessel is not at anchor, or
11 made fast to the shore, or aground.

12 ~~((29))~~ (28) "Vessel" includes every description of watercraft
13 on the water, other than a seaplane, used or capable of being used as
14 a means of transportation on the water. However, it does not include
15 inner tubes, air mattresses, sailboards, and small rafts or flotation
16 devices or toys customarily used by swimmers.

17 ~~((30))~~ (29) "Water skiing" means the physical act of being
18 towed behind a vessel on, but not limited to, any skis, aquaplane,
19 kneeboard, tube, or any other similar device.

20 ~~((31))~~ (30) "Waters of the state" means any waters within the
21 territorial limits of Washington state.

22 ~~((32))~~ (31) "Whitewater river outfitter" means any person who
23 is advertising to carry or carries passengers for hire on any
24 whitewater river of the state, but does not include any person whose
25 only service on a given trip is providing instruction in canoeing or
26 kayaking skills.

27 ~~((33))~~ (32) "Whitewater rivers of the state" means those rivers
28 and streams, or parts thereof, within the boundaries of the state as
29 listed in RCW 79A.60.470 or as designated by the commission under RCW
30 79A.60.495.

31 **Sec. 2.** RCW 79A.60.040 and 2014 c 132 s 1 are each amended to
32 read as follows:

33 (1) It is unlawful for any person to operate a vessel in a
34 reckless manner. For purposes of this section, operating a vessel in
35 a "reckless manner" means to operate a vessel in willful or wanton
36 disregard for the safety of persons or property.

37 (2) It is unlawful for a person to operate a vessel while under
38 the influence of intoxicating liquor, marijuana, or any drug. A
39 person is considered to be under the influence of intoxicating

1 liquor, marijuana, or any drug if(~~(, within two hours of operating a~~
2 vessel))):

3 (a) The person has, within two hours after operating a vessel, an
4 alcohol concentration of 0.08 or higher as shown by analysis of the
5 person's breath or blood made under RCW 46.61.506; or

6 (b) The person has, within two hours after operating a vessel, a
7 THC concentration of 5.00 or higher as shown by analysis of the
8 person's blood made under RCW 46.61.506; or

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

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

13 (3) The fact that any person charged with a violation of this
14 section is or has been entitled to use such drug under the laws of
15 this state shall not constitute a defense against any charge of
16 violating this section.

17 (4) (a) (~~(Any person who operates a vessel within this state is~~
18 ~~deemed to have given consent, subject to the provisions of RCW~~
19 ~~46.61.506, to a test or tests of the person's breath for the purpose~~
20 ~~of determining the alcohol concentration in the person's breath if~~
21 ~~arrested for any offense where, at the time of the arrest, the~~
22 ~~arresting officer has reasonable grounds to believe the person was~~
23 ~~operating a vessel while under the influence of intoxicating liquor~~
24 ~~or a combination of intoxicating liquor and any other drug.~~

25 ~~(b) When an arrest results from an accident in which there has~~
26 ~~been serious bodily injury to another person or death or the~~
27 ~~arresting officer has reasonable grounds to believe the person was~~
28 ~~operating a vessel while under the influence of THC or any other~~
29 ~~drug, a blood test may be administered with the consent of the~~
30 ~~arrested person and a valid waiver of the warrant requirement or~~
31 ~~without the consent of the person so arrested pursuant to a search~~
32 ~~warrant or when exigent circumstances exist.~~

33 ~~(c) Neither consent nor this section precludes a police officer~~
34 ~~from obtaining a search warrant for a person's breath or blood.~~

35 ~~(d) An arresting officer may administer field sobriety tests when~~
36 ~~circumstances permit.~~

37 ~~(5) The test or tests of breath must be administered pursuant to~~
38 ~~RCW 46.20.308. The officer shall warn the person that if the person~~
39 ~~refuses to take the test, the person will be issued a class 1 civil~~
40 ~~infraction under RCW 7.80.120)) It is an affirmative defense to a~~

1 violation of subsection (2)(a) of this section, which the defendant
2 must prove by a preponderance of the evidence, that the defendant
3 consumed a sufficient quantity of alcohol after the time of operating
4 the vessel and before the administration of an analysis of the
5 person's breath or blood to cause the defendant's alcohol
6 concentration to be 0.08 or more within two hours after operating the
7 vessel. The court shall not admit evidence of this defense unless the
8 defendant notifies the prosecution prior to the omnibus or pretrial
9 hearing in the case of the defendant's intent to assert the
10 affirmative defense.

11 (b) It is an affirmative defense to a violation of subsection
12 (2)(b) of this section, which the defendant must prove by a
13 preponderance of the evidence, that the defendant consumed a
14 sufficient quantity of marijuana after the time of operating the
15 vessel and before the administration of an analysis of the person's
16 blood to cause the defendant's THC concentration to be 5.00 or more
17 within two hours after operating the vessel. The court shall not
18 admit evidence of this defense unless the defendant notifies the
19 prosecution prior to the omnibus or pretrial hearing in the case of
20 the defendant's intent to assert the affirmative defense.

21 (5)(a) Analyses of blood or breath samples obtained more than two
22 hours after the alleged operation of the vessel may be used as
23 evidence that within two hours of the alleged operation of the
24 vessel, a person had an alcohol concentration of 0.08 or more in
25 violation of subsection (2)(a) of this section, and in any case in
26 which the analysis shows an alcohol concentration above 0.00 may be
27 used as evidence that a person was under the influence of, or
28 affected by, intoxicating liquor or any drug in violation of
29 subsection (2)(c) or (d) of this section.

30 (b) Analyses of blood samples obtained more than two hours after
31 the alleged operation of the vessel may be used as evidence that
32 within two hours of the alleged operation of the vessel, a person had
33 a THC concentration of 5.00 or more in violation of subsection (2)(b)
34 of this section, and in any case in which the analysis shows a THC
35 concentration above 0.00 may be used as evidence that a person was
36 under the influence of, or affected by, marijuana in violation of
37 subsection (2)(c) or (d) of this section.

38 (6) A violation of subsection (1) of this section is a
39 misdemeanor. A violation of subsection (2) of this section is a gross
40 misdemeanor. In addition to the statutory penalties imposed, the

1 court may order the defendant to pay restitution for any damages or
2 injuries resulting from the offense.

3 **Sec. 3.** RCW 79A.60.050 and 2000 c 11 s 94 are each amended to
4 read as follows:

5 (1) When the death of any person ensues within three years as a
6 proximate result of injury proximately caused by the operating of any
7 vessel by any person, the operator is guilty of homicide by
8 watercraft if he or she was operating the vessel:

9 (a) While under the influence of intoxicating liquor or any drug,
10 as defined by RCW 79A.60.040;

11 (b) In a reckless manner; or

12 (c) With disregard for the safety of others.

13 (2) When the death is caused by a skier towed by a vessel, the
14 operator of the vessel is not guilty of homicide by watercraft.

15 (3) A violation of this section is punishable as a class A felony
16 according to chapter 9A.20 RCW.

17 (4) For purposes of this section, operating a vessel in a
18 "reckless manner" means operating a vessel in a rash or heedless
19 manner, indifferent to the consequences.

20 **Sec. 4.** RCW 79A.60.060 and 2000 c 11 s 95 are each amended to
21 read as follows:

22 (1) (~~("Serious bodily injury" means bodily injury which involves~~
23 ~~a substantial risk of death, serious permanent disfigurement, or~~
24 ~~protracted loss or impairment of the function of any part or organ of~~
25 ~~the body.~~

26 ~~(2))~~) A person is guilty of assault by watercraft if he or she
27 operates any vessel:

28 (a) In a reckless manner, and this conduct is ~~((the))~~ a proximate
29 cause of ((serious bodily injury)) substantial bodily harm to
30 another; ~~((or))~~

31 (b) While under the influence of intoxicating liquor or any drug,
32 as defined by RCW 79A.60.040, and this conduct is ~~((the))~~ a proximate
33 cause of ((serious bodily injury)) substantial bodily harm to
34 another; or

35 (c) With disregard for the safety of others, and this conduct is
36 a proximate cause of substantial bodily harm to another.

1 (~~(3)~~) (2) When the injury is caused by a skier towed by a
2 vessel, the operator of the vessel is not guilty of assault by
3 watercraft.

4 (~~(4)~~) (3) A violation of this section is punishable as a class
5 B felony according to chapter 9A.20 RCW.

6 (4) For purposes of this section:

7 (a) Operation of a vessel in a "reckless manner" means operating
8 a vessel in a rash or heedless manner, indifferent to the
9 consequences.

10 (b) "Substantial bodily harm" has the same meaning as in RCW
11 9A.04.110.

12 **Sec. 5.** RCW 79A.60.190 and 2000 c 11 s 101 are each amended to
13 read as follows:

14 (1) A person shall not operate a personal watercraft unless each
15 person aboard the personal watercraft is wearing a personal flotation
16 device approved by the commission. Except as provided for in RCW
17 79A.60.020, a violation of this subsection is a civil infraction
18 punishable under RCW 7.84.100.

19 (2) A person operating a personal watercraft equipped by the
20 manufacturer with a lanyard-type engine cutoff switch shall attach
21 the lanyard to his or her person, clothing, or personal flotation
22 device as appropriate for the specific vessel. It is unlawful for any
23 person to remove or disable a cutoff switch that was installed by the
24 manufacturer.

25 (3) A person shall not operate a personal watercraft during
26 darkness.

27 (4) A person under the age of fourteen shall not operate a
28 personal watercraft on the waters of this state.

29 (5) A person shall not operate a personal watercraft in a
30 reckless manner, including recklessly weaving through congested
31 vessel traffic, recklessly jumping the wake of another vessel
32 unreasonably or unnecessarily close to the vessel or when visibility
33 around the vessel is obstructed, or recklessly swerving at the last
34 possible moment to avoid collision.

35 (6) A person shall not lease, hire, or rent a personal watercraft
36 to a person under the age of sixteen.

37 (7) Subsections (1) through (6) of this section shall not apply
38 to a performer engaged in a professional exhibition or a person
39 participating in a regatta, race, marine parade, tournament, or

1 exhibition authorized or otherwise permitted by the appropriate
2 agency having jurisdiction and authority to authorize such events.

3 (8) Violations of subsections (2) through (6) of this section
4 constitute a misdemeanor under RCW 9.92.030.

5 (9) For purposes of this section, operation in a "reckless
6 manner" or "recklessly" means in willful or wanton disregard for the
7 safety of persons or property.

8 **Sec. 6.** RCW 79A.60.700 and 2014 c 132 s 2 are each amended to
9 read as follows:

10 ~~((1) The refusal of a person to submit to a test of the alcohol~~
11 ~~concentration, THC concentration, or presence of any drug in the~~
12 ~~person's blood or breath is not admissible into evidence at a~~
13 ~~subsequent criminal trial.~~

14 ~~(2))~~ A person's refusal to submit to a test or tests of the
15 person's breath pursuant to ~~((RCW 79A.60.040(4)(a))~~ section 7 of
16 this act constitutes a class 1 civil infraction under RCW 7.80.120.

17 NEW SECTION. **Sec. 7.** A new section is added to chapter 79A.60
18 RCW to read as follows:

19 (1) Any person who operates a vessel within this state is deemed
20 to have given consent, subject to the provisions of RCW 46.61.506, to
21 a test or tests of his or her breath for the purpose of determining
22 the alcohol concentration in his or her breath if arrested for any
23 offense where, at the time of the arrest, the arresting officer has
24 reasonable grounds to believe the person had been operating a vessel
25 while under the influence of intoxicating liquor or any drug.

26 (2) The test or tests of breath shall be administered at the
27 direction of a law enforcement officer having reasonable grounds to
28 believe the person to have been operating a vessel while under the
29 influence of intoxicating liquor or any drug. Prior to administering
30 a breath test pursuant to this section, the officer shall inform the
31 person of his or her right under this section to refuse the breath
32 test and of his or her right to have additional tests administered by
33 any qualified person of his or her choosing as provided in RCW
34 46.61.506. The officer shall warn the person that if the person
35 refuses to take the test, the person will be issued a class 1 civil
36 infraction under RCW 7.80.120.

37 (3) The arresting officer may administer field sobriety tests
38 when circumstances permit. If, following his or her arrest and

1 receipt of warnings under subsection (2) of this section, the person
2 arrested exercises the right, granted herein, by refusing upon the
3 request of a law enforcement officer to submit to a test or tests of
4 his or her breath, no test shall be given except as otherwise
5 authorized by law.

6 (4) Nothing in subsection (1), (2), or (3) of this section
7 precludes a law enforcement officer from obtaining a person's blood
8 to test for alcohol, marijuana, or any drug, pursuant to a search
9 warrant, a valid waiver of the warrant requirement, when exigent
10 circumstances exist, or under any other authority of law. Any blood
11 drawn for the purpose of determining the person's alcohol, marijuana
12 levels, or any drug is drawn pursuant to this section when the
13 officer has reasonable grounds to believe that the person is
14 operating a vessel while under the influence of intoxicating liquor
15 or any drug.

16 (5) The refusal of a person to submit to a test of the alcohol or
17 drug concentration in the person's breath under this section is
18 admissible into evidence at a subsequent criminal trial. The refusal
19 of a person to submit to a test of the person's blood is admissible
20 into evidence at a subsequent criminal trial when a search warrant,
21 or an exception to the search warrant, authorized the seizure.

22 **Sec. 8.** RCW 46.61.506 and 2017 c 336 s 7 are each amended to
23 read as follows:

24 (1) Upon the trial of any civil or criminal action or proceeding
25 arising out of acts alleged to have been committed by any person
26 while driving or in actual physical control of a vehicle while under
27 the influence of intoxicating liquor or any drug, or while operating
28 a vessel while under the influence of intoxicating liquor or any
29 drug, if the person's alcohol concentration is less than 0.08 or the
30 person's THC concentration is less than 5.00, it is evidence that may
31 be considered with other competent evidence in determining whether
32 the person was under the influence of intoxicating liquor or any
33 drug.

34 (2) (a) The breath analysis of the person's alcohol concentration
35 shall be based upon grams of alcohol per two hundred ten liters of
36 breath.

37 (b) The blood analysis of the person's THC concentration shall be
38 based upon nanograms per milliliter of whole blood.

1 (c) The foregoing provisions of this section shall not be
2 construed as limiting the introduction of any other competent
3 evidence bearing upon the question whether the person was under the
4 influence of intoxicating liquor or any drug.

5 (3) Analysis of the person's blood or breath to be considered
6 valid under the provisions of this section (~~(e)~~), RCW 46.61.502
7 (~~(e)~~), 46.61.504, or chapter 79A.60 RCW, shall have been performed
8 according to methods approved by the state toxicologist and by an
9 individual possessing a valid permit issued by the state toxicologist
10 for this purpose. The state toxicologist is directed to approve
11 satisfactory techniques or methods, to supervise the examination of
12 individuals to ascertain their qualifications and competence to
13 conduct such analyses, and to issue permits which shall be subject to
14 termination or revocation at the discretion of the state
15 toxicologist.

16 (4) (a) A breath test performed by any instrument approved by the
17 state toxicologist shall be admissible at trial or in an
18 administrative proceeding if the prosecution or department produces
19 prima facie evidence of the following:

20 (i) The person who performed the test was authorized to perform
21 such test by the state toxicologist;

22 (ii) The person being tested did not vomit or have anything to
23 eat, drink, or smoke for at least fifteen minutes prior to
24 administration of the test;

25 (iii) The person being tested did not have any foreign
26 substances, not to include dental work or piercings, fixed or
27 removable, in his or her mouth at the beginning of the fifteen-minute
28 observation period;

29 (iv) Prior to the start of the test, the temperature of any
30 liquid simulator solution utilized as an external standard, as
31 measured by a thermometer approved of by the state toxicologist was
32 thirty-four degrees centigrade plus or minus 0.3 degrees centigrade;

33 (v) The internal standard test resulted in the message
34 "verified";

35 (vi) The two breath samples agree to within plus or minus ten
36 percent of their mean to be determined by the method approved by the
37 state toxicologist;

38 (vii) The result of the test of the liquid simulator solution
39 external standard or dry gas external standard result did lie
40 between .072 to .088 inclusive; and

1 (viii) All blank tests gave results of .000.

2 (b) For purposes of this section, "prima facie evidence" is
3 evidence of sufficient circumstances that would support a logical and
4 reasonable inference of the facts sought to be proved. In assessing
5 whether there is sufficient evidence of the foundational facts, the
6 court or administrative tribunal is to assume the truth of the
7 prosecution's or department's evidence and all reasonable inferences
8 from it in a light most favorable to the prosecution or department.

9 (c) Nothing in this section shall be deemed to prevent the
10 subject of the test from challenging the reliability or accuracy of
11 the test, the reliability or functioning of the instrument, or any
12 maintenance procedures. Such challenges, however, shall not preclude
13 the admissibility of the test once the prosecution or department has
14 made a prima facie showing of the requirements contained in (a) of
15 this subsection. Instead, such challenges may be considered by the
16 trier of fact in determining what weight to give to the test result.

17 (5) When a blood test is administered under the provisions of RCW
18 46.20.308 or section 7 of this act, the withdrawal of blood for the
19 purpose of determining its alcohol or drug content may be performed
20 only by a physician licensed under chapter 18.71 RCW; an osteopathic
21 physician licensed under chapter 18.57 RCW; a registered nurse,
22 licensed practical nurse, or advanced registered nurse practitioner
23 licensed under chapter 18.79 RCW; a physician assistant licensed
24 under chapter 18.71A RCW; an osteopathic physician assistant licensed
25 under chapter 18.57A RCW; an advanced emergency medical technician or
26 paramedic certified under chapter 18.71 RCW; or a medical assistant-
27 certified or medical assistant-phlebotomist certified under chapter
28 18.360 RCW, a person holding another credential under Title 18 RCW
29 whose scope of practice includes performing venous blood draws, or a
30 forensic phlebotomist certified under chapter 18.360 RCW. When the
31 blood test is performed outside the state of Washington, the
32 withdrawal of blood for the purpose of determining its alcohol or
33 drug content may be performed by any person who is authorized by the
34 out-of-state jurisdiction to perform venous blood draws. Proof of
35 qualification to draw blood may be established through the department
36 of health's provider credential search. This limitation shall not
37 apply to the taking of breath specimens.

38 (6) When a venous blood sample is performed by a forensic
39 phlebotomist certified under chapter 18.360 RCW, it must be done
40 under the following conditions:

1 (a) If taken at the scene, it must be performed in an ambulance
2 or aid service vehicle licensed by the department of health under
3 chapter 18.73 RCW.

4 (b) The collection of blood samples must not interfere with the
5 provision of essential medical care.

6 (c) The blood sample must be collected using sterile equipment
7 and the skin area of puncture must be thoroughly cleansed and
8 disinfected.

9 (d) The person whose blood is collected must be seated, reclined,
10 or lying down when the blood is collected.

11 (7) The person tested may have a licensed or certified health
12 care provider listed in subsection (5) of this section, or a
13 qualified technician, chemist, or other qualified person of his or
14 her own choosing administer one or more tests in addition to any
15 administered at the direction of a law enforcement officer. The test
16 will be admissible if the person establishes the general
17 acceptability of the testing technique or method. The failure or
18 inability to obtain an additional test by a person shall not preclude
19 the admission of evidence relating to the test or tests taken at the
20 direction of a law enforcement officer.

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

25 **Sec. 9.** RCW 9.94A.515 and 2019 c 271 s 7, 2019 c 243 s 5, 2019 c
26 64 s 3, and 2019 c 46 s 5009 are each reenacted and amended to read
27 as follows:

28 TABLE 2

29 CRIMES INCLUDED WITHIN EACH
30 SERIOUSNESS LEVEL

31 XVI Aggravated Murder 1 (RCW 10.95.020)

32 XV Homicide by abuse (RCW 9A.32.055)

33 Malicious explosion 1 (RCW
34 70.74.280(1))

35 Murder 1 (RCW 9A.32.030)

36 XIV Murder 2 (RCW 9A.32.050)

37 Trafficking 1 (RCW 9A.40.100(1))

1 XIII Malicious explosion 2 (RCW
2 70.74.280(2))
3 Malicious placement of an explosive 1
4 (RCW 70.74.270(1))
5 XII Assault 1 (RCW 9A.36.011)
6 Assault of a Child 1 (RCW 9A.36.120)
7 Malicious placement of an imitation
8 device 1 (RCW 70.74.272(1)(a))
9 Promoting Commercial Sexual Abuse of
10 a Minor (RCW 9.68A.101)
11 Rape 1 (RCW 9A.44.040)
12 Rape of a Child 1 (RCW 9A.44.073)
13 Trafficking 2 (RCW 9A.40.100(3))
14 XI Manslaughter 1 (RCW 9A.32.060)
15 Rape 2 (RCW 9A.44.050)
16 Rape of a Child 2 (RCW 9A.44.076)
17 Vehicular Homicide, by being under the
18 influence of intoxicating liquor or
19 any drug (RCW 46.61.520)
20 Vehicular Homicide, by the operation of
21 any vehicle in a reckless manner
22 (RCW 46.61.520)
23 X Child Molestation 1 (RCW 9A.44.083)
24 Criminal Mistreatment 1 (RCW
25 9A.42.020)
26 Indecent Liberties (with forcible
27 compulsion) (RCW
28 9A.44.100(1)(a))
29 Kidnapping 1 (RCW 9A.40.020)
30 Leading Organized Crime (RCW
31 9A.82.060(1)(a))
32 Malicious explosion 3 (RCW
33 70.74.280(3))
34 Sexually Violent Predator Escape (RCW
35 9A.76.115)

1 IX Abandonment of Dependent Person 1
2 (RCW 9A.42.060)
3 Assault of a Child 2 (RCW 9A.36.130)
4 Explosive devices prohibited (RCW
5 70.74.180)
6 Hit and Run—Death (RCW
7 46.52.020(4)(a))
8 Homicide by Watercraft, by being under
9 the influence of intoxicating liquor
10 or any drug (RCW 79A.60.050)
11 Inciting Criminal Profiteering (RCW
12 9A.82.060(1)(b))
13 Malicious placement of an explosive 2
14 (RCW 70.74.270(2))
15 Robbery 1 (RCW 9A.56.200)
16 Sexual Exploitation (RCW 9.68A.040)
17 VIII Arson 1 (RCW 9A.48.020)
18 Commercial Sexual Abuse of a Minor
19 (RCW 9.68A.100)
20 Homicide by Watercraft, by the
21 operation of any vessel in a reckless
22 manner (RCW 79A.60.050)
23 Manslaughter 2 (RCW 9A.32.070)
24 Promoting Prostitution 1 (RCW
25 9A.88.070)
26 Theft of Ammonia (RCW 69.55.010)
27 VII Air bag diagnostic systems (causing
28 bodily injury or death) (RCW
29 46.37.660(2)(b))
30 Air bag replacement requirements
31 (causing bodily injury or death)
32 (RCW 46.37.660(1)(b))
33 Burglary 1 (RCW 9A.52.020)
34 Child Molestation 2 (RCW 9A.44.086)

1 Civil Disorder Training (RCW
2 9A.48.120)
3 Dealing in depictions of minor engaged
4 in sexually explicit conduct 1
5 (RCW 9.68A.050(1))
6 Drive-by Shooting (RCW 9A.36.045)
7 Homicide by Watercraft, by disregard
8 for the safety of others (RCW
9 79A.60.050)
10 Indecent Liberties (without forcible
11 compulsion) (RCW 9A.44.100(1)
12 (b) and (c))
13 Introducing Contraband 1 (RCW
14 9A.76.140)
15 Malicious placement of an explosive 3
16 (RCW 70.74.270(3))
17 Manufacture or import counterfeit,
18 nonfunctional, damaged, or
19 previously deployed air bag
20 (causing bodily injury or death)
21 (RCW 46.37.650(1)(b))
22 Negligently Causing Death By Use of a
23 Signal Preemption Device (RCW
24 46.37.675)
25 Sell, install, or reinstall counterfeit,
26 nonfunctional, damaged, or
27 previously deployed airbag (RCW
28 46.37.650(2)(b))
29 Sending, bringing into state depictions
30 of minor engaged in sexually
31 explicit conduct 1 (RCW
32 9.68A.060(1))
33 Unlawful Possession of a Firearm in the
34 first degree (RCW 9.41.040(1))
35 Use of a Machine Gun or Bump-fire
36 Stock in Commission of a Felony
37 (RCW 9.41.225)

1 Vehicular Homicide, by disregard for
2 the safety of others (RCW
3 46.61.520)

4 VI Bail Jumping with Murder 1 (RCW
5 9A.76.170(3)(a))
6 Bribery (RCW 9A.68.010)
7 Incest 1 (RCW 9A.64.020(1))
8 Intimidating a Judge (RCW 9A.72.160)
9 Intimidating a Juror/Witness (RCW
10 9A.72.110, 9A.72.130)
11 Malicious placement of an imitation
12 device 2 (RCW 70.74.272(1)(b))
13 Possession of Depictions of a Minor
14 Engaged in Sexually Explicit
15 Conduct 1 (RCW 9.68A.070(1))
16 Rape of a Child 3 (RCW 9A.44.079)
17 Theft of a Firearm (RCW 9A.56.300)
18 Theft from a Vulnerable Adult 1 (RCW
19 9A.56.400(1))
20 Unlawful Storage of Ammonia (RCW
21 69.55.020)

22 V Abandonment of Dependent Person 2
23 (RCW 9A.42.070)
24 Advancing money or property for
25 extortionate extension of credit
26 (RCW 9A.82.030)
27 Air bag diagnostic systems (RCW
28 46.37.660(2)(c))
29 Air bag replacement requirements
30 (RCW 46.37.660(1)(c))
31 Bail Jumping with class A Felony
32 (RCW 9A.76.170(3)(b))
33 Child Molestation 3 (RCW 9A.44.089)
34 Criminal Mistreatment 2 (RCW
35 9A.42.030)

1 Custodial Sexual Misconduct 1 (RCW
2 9A.44.160)

3 Dealing in Depictions of Minor
4 Engaged in Sexually Explicit
5 Conduct 2 (RCW 9.68A.050(2))

6 Domestic Violence Court Order
7 Violation (RCW 10.99.040,
8 10.99.050, 26.09.300, 26.10.220,
9 26.26B.050, 26.50.110, 26.52.070,
10 or 74.34.145)

11 Extortion 1 (RCW 9A.56.120)

12 Extortionate Extension of Credit (RCW
13 9A.82.020)

14 Extortionate Means to Collect
15 Extensions of Credit (RCW
16 9A.82.040)

17 Incest 2 (RCW 9A.64.020(2))

18 Kidnapping 2 (RCW 9A.40.030)

19 Manufacture or import counterfeit,
20 nonfunctional, damaged, or
21 previously deployed air bag (RCW
22 46.37.650(1)(c))

23 Perjury 1 (RCW 9A.72.020)

24 Persistent prison misbehavior (RCW
25 9.94.070)

26 Possession of a Stolen Firearm (RCW
27 9A.56.310)

28 Rape 3 (RCW 9A.44.060)

29 Rendering Criminal Assistance 1 (RCW
30 9A.76.070)

31 Sell, install, or reinstall counterfeit,
32 nonfunctional, damaged, or
33 previously deployed airbag (RCW
34 46.37.650(2)(c))

1 Sending, Bringing into State Depictions
2 of Minor Engaged in Sexually
3 Explicit Conduct 2 (RCW
4 9.68A.060(2))
5 Sexual Misconduct with a Minor 1
6 (RCW 9A.44.093)
7 Sexually Violating Human Remains
8 (RCW 9A.44.105)
9 Stalking (RCW 9A.46.110)
10 Taking Motor Vehicle Without
11 Permission 1 (RCW 9A.56.070)
12 IV Arson 2 (RCW 9A.48.030)
13 Assault 2 (RCW 9A.36.021)
14 Assault 3 (of a Peace Officer with a
15 Projectile Stun Gun) (RCW
16 9A.36.031(1)(h))
17 Assault 4 (third domestic violence
18 offense) (RCW 9A.36.041(3))
19 Assault by Watercraft, by being under
20 the influence of alcohol or any drug
21 (RCW 79A.60.060)
22 Assault by Watercraft, by the operation
23 of a vessel in a reckless manner
24 (RCW 79A.60.060)
25 Bribing a Witness/Bribe Received by
26 Witness (RCW 9A.72.090,
27 9A.72.100)
28 Cheating 1 (RCW 9.46.1961)
29 Commercial Bribery (RCW 9A.68.060)
30 Counterfeiting (RCW 9.16.035(4))
31 Driving While Under the Influence
32 (RCW 46.61.502(6))
33 Endangerment with a Controlled
34 Substance (RCW 9A.42.100)
35 Escape 1 (RCW 9A.76.110)

1 Hate Crime (RCW 9A.36.080)
2 Hit and Run—Injury (RCW
3 46.52.020(4)(b))
4 Hit and Run with Vessel—Injury
5 Accident (RCW 79A.60.200(3))
6 Identity Theft 1 (RCW 9.35.020(2))
7 Indecent Exposure to Person Under Age
8 Fourteen (subsequent sex offense)
9 (RCW 9A.88.010)
10 Influencing Outcome of Sporting Event
11 (RCW 9A.82.070)
12 Physical Control of a Vehicle While
13 Under the Influence (RCW
14 46.61.504(6))
15 Possession of Depictions of a Minor
16 Engaged in Sexually Explicit
17 Conduct 2 (RCW 9.68A.070(2))
18 Residential Burglary (RCW 9A.52.025)
19 Robbery 2 (RCW 9A.56.210)
20 Theft of Livestock 1 (RCW 9A.56.080)
21 Threats to Bomb (RCW 9.61.160)
22 Trafficking in Stolen Property 1 (RCW
23 9A.82.050)
24 Unlawful factoring of a credit card or
25 payment card transaction (RCW
26 9A.56.290(4)(b))
27 Unlawful transaction of health coverage
28 as a health care service contractor
29 (RCW 48.44.016(3))
30 Unlawful transaction of health coverage
31 as a health maintenance
32 organization (RCW 48.46.033(3))
33 Unlawful transaction of insurance
34 business (RCW 48.15.023(3))
35 Unlicensed practice as an insurance
36 professional (RCW 48.17.063(2))

1 Use of Proceeds of Criminal
2 Profiteering (RCW 9A.82.080 (1)
3 and (2))
4 Vehicle Prowling 2 (third or subsequent
5 offense) (RCW 9A.52.100(3))
6 Vehicular Assault, by being under the
7 influence of intoxicating liquor or
8 any drug, or by the operation or
9 driving of a vehicle in a reckless
10 manner (RCW 46.61.522)
11 Viewing of Depictions of a Minor
12 Engaged in Sexually Explicit
13 Conduct 1 (RCW 9.68A.075(1))
14 Willful Failure to Return from Furlough
15 (RCW 72.66.060)
16 III Animal Cruelty 1 (Sexual Conduct or
17 Contact) (RCW 16.52.205(3))
18 Assault 3 (Except Assault 3 of a Peace
19 Officer With a Projectile Stun Gun)
20 (RCW 9A.36.031 except subsection
21 (1)(h))
22 Assault of a Child 3 (RCW 9A.36.140)
23 Assault by Watercraft, by disregard for
24 the safety of others (RCW
25 79A.60.060)
26 Bail Jumping with class B or C Felony
27 (RCW 9A.76.170(3)(c))
28 Burglary 2 (RCW 9A.52.030)
29 Communication with a Minor for
30 Immoral Purposes (RCW
31 9.68A.090)
32 Criminal Gang Intimidation (RCW
33 9A.46.120)
34 Custodial Assault (RCW 9A.36.100)
35 Cyberstalking (subsequent conviction or
36 threat of death) (RCW 9.61.260(3))

1 Escape 2 (RCW 9A.76.120)
2 Extortion 2 (RCW 9A.56.130)
3 Harassment (RCW 9A.46.020)
4 Intimidating a Public Servant (RCW
5 9A.76.180)
6 Introducing Contraband 2 (RCW
7 9A.76.150)
8 Malicious Injury to Railroad Property
9 (RCW 81.60.070)
10 Manufacture of Untraceable Firearm
11 with Intent to Sell (RCW 9.41.190)
12 Manufacture or Assembly of an
13 Undetectable Firearm or
14 Untraceable Firearm (RCW
15 9.41.325)
16 Mortgage Fraud (RCW 19.144.080)
17 Negligently Causing Substantial Bodily
18 Harm By Use of a Signal
19 Preemption Device (RCW
20 46.37.674)
21 Organized Retail Theft 1 (RCW
22 9A.56.350(2))
23 Perjury 2 (RCW 9A.72.030)
24 Possession of Incendiary Device (RCW
25 9.40.120)
26 Possession of Machine Gun, Bump-Fire
27 Stock, Undetectable Firearm, or
28 Short-Barreled Shotgun or Rifle
29 (RCW 9.41.190)
30 Promoting Prostitution 2 (RCW
31 9A.88.080)
32 Retail Theft with Special Circumstances
33 1 (RCW 9A.56.360(2))
34 Securities Act violation (RCW
35 21.20.400)

1 Tampering with a Witness (RCW
2 9A.72.120)
3 Telephone Harassment (subsequent
4 conviction or threat of death) (RCW
5 9.61.230(2))
6 Theft of Livestock 2 (RCW 9A.56.083)
7 Theft with the Intent to Resell 1 (RCW
8 9A.56.340(2))
9 Trafficking in Stolen Property 2 (RCW
10 9A.82.055)
11 Unlawful Hunting of Big Game 1 (RCW
12 77.15.410(3)(b))
13 Unlawful Imprisonment (RCW
14 9A.40.040)
15 Unlawful Misbranding of Fish or
16 Shellfish 1 (RCW 77.140.060(3))
17 Unlawful possession of firearm in the
18 second degree (RCW 9.41.040(2))
19 Unlawful Taking of Endangered Fish or
20 Wildlife 1 (RCW 77.15.120(3)(b))
21 Unlawful Trafficking in Fish, Shellfish,
22 or Wildlife 1 (RCW
23 77.15.260(3)(b))
24 Unlawful Use of a Nondesignated
25 Vessel (RCW 77.15.530(4))
26 Vehicular Assault, by the operation or
27 driving of a vehicle with disregard
28 for the safety of others (RCW
29 46.61.522)
30 Willful Failure to Return from Work
31 Release (RCW 72.65.070)
32 II Commercial Fishing Without a License
33 1 (RCW 77.15.500(3)(b))
34 Computer Trespass 1 (RCW 9A.90.040)
35 Counterfeiting (RCW 9.16.035(3))

1 Electronic Data Service Interference
2 (RCW 9A.90.060)
3 Electronic Data Tampering 1 (RCW
4 9A.90.080)
5 Electronic Data Theft (RCW 9A.90.100)
6 Engaging in Fish Dealing Activity
7 Unlicensed 1 (RCW 77.15.620(3))
8 Escape from Community Custody
9 (RCW 72.09.310)
10 Failure to Register as a Sex Offender
11 (second or subsequent offense)
12 (RCW 9A.44.130 prior to June 10,
13 2010, and RCW 9A.44.132)
14 Health Care False Claims (RCW
15 48.80.030)
16 Identity Theft 2 (RCW 9.35.020(3))
17 Improperly Obtaining Financial
18 Information (RCW 9.35.010)
19 Malicious Mischief 1 (RCW 9A.48.070)
20 Organized Retail Theft 2 (RCW
21 9A.56.350(3))
22 Possession of Stolen Property 1 (RCW
23 9A.56.150)
24 Possession of a Stolen Vehicle (RCW
25 9A.56.068)
26 Retail Theft with Special Circumstances
27 2 (RCW 9A.56.360(3))
28 Scrap Processing, Recycling, or
29 Supplying Without a License
30 (second or subsequent offense)
31 (RCW 19.290.100)
32 Theft 1 (RCW 9A.56.030)
33 Theft of a Motor Vehicle (RCW
34 9A.56.065)

1 Theft of Rental, Leased, Lease-
2 purchased, or Loaned Property
3 (valued at five thousand dollars or
4 more) (RCW 9A.56.096(5)(a))
5 Theft with the Intent to Resell 2 (RCW
6 9A.56.340(3))
7 Trafficking in Insurance Claims (RCW
8 48.30A.015)
9 Unlawful factoring of a credit card or
10 payment card transaction (RCW
11 9A.56.290(4)(a))
12 Unlawful Participation of Non-Indians
13 in Indian Fishery (RCW
14 77.15.570(2))
15 Unlawful Practice of Law (RCW
16 2.48.180)
17 Unlawful Purchase or Use of a License
18 (RCW 77.15.650(3)(b))
19 Unlawful Trafficking in Fish, Shellfish,
20 or Wildlife 2 (RCW
21 77.15.260(3)(a))
22 Unlicensed Practice of a Profession or
23 Business (RCW 18.130.190(7))
24 Voyeurism 1 (RCW 9A.44.115)
25 I Attempting to Elude a Pursuing Police
26 Vehicle (RCW 46.61.024)
27 False Verification for Welfare (RCW
28 74.08.055)
29 Forgery (RCW 9A.60.020)
30 Fraudulent Creation or Revocation of a
31 Mental Health Advance Directive
32 (RCW 9A.60.060)
33 Malicious Mischief 2 (RCW 9A.48.080)
34 Mineral Trespass (RCW 78.44.330)
35 Possession of Stolen Property 2 (RCW
36 9A.56.160)

1 Reckless Burning 1 (RCW 9A.48.040)
2 Spotlighting Big Game 1 (RCW
3 77.15.450(3)(b))
4 Suspension of Department Privileges 1
5 (RCW 77.15.670(3)(b))
6 Taking Motor Vehicle Without
7 Permission 2 (RCW 9A.56.075)
8 Theft 2 (RCW 9A.56.040)
9 Theft from a Vulnerable Adult 2 (RCW
10 9A.56.400(2))
11 Theft of Rental, Leased, Lease-
12 purchased, or Loaned Property
13 (valued at seven hundred fifty
14 dollars or more but less than five
15 thousand dollars) (RCW
16 9A.56.096(5)(b))
17 Transaction of insurance business
18 beyond the scope of licensure
19 (RCW 48.17.063)
20 Unlawful Fish and Shellfish Catch
21 Accounting (RCW 77.15.630(3)(b))
22 Unlawful Issuance of Checks or Drafts
23 (RCW 9A.56.060)
24 Unlawful Possession of Fictitious
25 Identification (RCW 9A.56.320)
26 Unlawful Possession of Instruments of
27 Financial Fraud (RCW 9A.56.320)
28 Unlawful Possession of Payment
29 Instruments (RCW 9A.56.320)
30 Unlawful Possession of a Personal
31 Identification Device (RCW
32 9A.56.320)
33 Unlawful Production of Payment
34 Instruments (RCW 9A.56.320)

1 Unlawful Releasing, Planting,
2 Possessing, or Placing Deleterious
3 Exotic Wildlife (RCW
4 77.15.250(2)(b))
5 Unlawful Trafficking in Food Stamps
6 (RCW 9.91.142)
7 Unlawful Use of Food Stamps (RCW
8 9.91.144)
9 Unlawful Use of Net to Take Fish 1
10 (RCW 77.15.580(3)(b))
11 Unlawful Use of Prohibited Aquatic
12 Animal Species (RCW
13 77.15.253(3))
14 Vehicle Prowl 1 (RCW 9A.52.095)
15 Violating Commercial Fishing Area or
16 Time 1 (RCW 77.15.550(3)(b))

--- **END** ---