
SENATE BILL 6708

State of Washington 55th Legislature 1998 Regular Session

By Senators Franklin, Hargrove, Fairley, Patterson, Heavey and Winsley

Read first time 01/28/98. Referred to Committee on Law & Justice.

1 AN ACT Relating to road rage; amending RCW 9.94A.390 and 13.40.150;
2 reenacting and amending RCW 46.63.020; adding a new section to chapter
3 46.61 RCW; creating a new section; prescribing penalties; and providing
4 an effective date.

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

6 NEW SECTION. **Sec. 1.** The legislature intends to reduce the
7 deaths, injuries, and property damage resulting from inappropriate
8 aggressive driving. The cost to the families, survivors, and taxpayers
9 associated with accidents involving aggressive driving is in the
10 hundreds of millions of dollars annually and continues to grow as
11 congestion and population increases. The legislature does not
12 recognize aggressive driving as a defense or mental disorder in
13 criminal or civil litigation, but does not intend to reform or affect
14 the law on self-defense.

15 NEW SECTION. **Sec. 2.** A new section is added to chapter 46.61 RCW
16 to read as follows:

1 (1) A person who commits any two or more acts of aggressive driving
2 within five consecutive miles is guilty of the crime of aggressive
3 driving.

4 (2)(a) The first violation of this section within a five-year
5 period is a misdemeanor and shall be punished as follows:

6 (i) By imprisonment for not less than one day. Twenty-four
7 consecutive hours of the imprisonment may not be suspended or deferred
8 unless the court finds that the imposition of this mandatory minimum
9 sentence would impose a substantial risk to the offender's physical or
10 mental well-being. Whenever the mandatory minimum sentence is
11 suspended or deferred, the court shall state in writing the reason for
12 granting the suspension or deferral and the facts upon which the
13 suspension or deferral is based; 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.

18 (b) A second or subsequent violation of this section within a five-
19 year period is a gross misdemeanor and shall be punished as follows:

20 (i) By imprisonment for not less than two days. Two consecutive
21 days of the imprisonment may not be suspended or deferred unless the
22 court finds that the imposition of this mandatory minimum sentence
23 would impose a substantial risk to the offender's physical or mental
24 well-being. Whenever the mandatory minimum sentence is suspended or
25 deferred, the court shall state in writing the reason for granting the
26 suspension or deferral and the facts upon which the suspension or
27 deferral is based; and

28 (ii) By a fine of not less than five hundred dollars nor more than
29 five thousand dollars. Five hundred dollars of the fine may not be
30 suspended or deferred unless the court finds the offender to be
31 indigent.

32 (3) For the purposes of this section, the following traffic
33 infractions are acts of aggressive driving:

34 (a) RCW 46.61.050

35 (b) RCW 46.61.060

36 (c) RCW 46.61.080

37 (d) RCW 46.61.110

38 (e) RCW 46.61.130

39 (f) RCW 46.61.145

1 (g) RCW 46.61.150
2 (h) RCW 46.61.180
3 (i) RCW 46.61.185
4 (j) RCW 46.61.190
5 (k) RCW 46.61.195
6 (l) RCW 46.61.245
7 (m) RCW 46.61.290
8 (n) RCW 46.61.295
9 (o) RCW 46.61.305
10 (p) RCW 46.61.345
11 (q) RCW 46.61.370
12 (r) RCW 46.61.400
13 (s) RCW 46.61.425
14 (t) RCW 46.61.440
15 (u) RCW 46.61.527(2)
16 (v) RCW 46.61.560
17 (w) RCW 46.61.570
18 (x) RCW 46.61.620
19 (y) RCW 46.61.645(1)
20 (z) RCW 46.61.670

21 **Sec. 3.** RCW 46.63.020 and 1997 c 229 s 13 and 1997 c 66 s 8 are
22 each reenacted and amended to read as follows:

23 Failure to perform any act required or the performance of any act
24 prohibited by this title or an equivalent administrative regulation or
25 local law, ordinance, regulation, or resolution relating to traffic
26 including parking, standing, stopping, and pedestrian offenses, is
27 designated as a traffic infraction and may not be classified as a
28 criminal offense, except for an offense contained in the following
29 provisions of this title or a violation of an equivalent administrative
30 regulation or local law, ordinance, regulation, or resolution:

31 (1) RCW 46.09.120(2) relating to the operation of a nonhighway
32 vehicle while under the influence of intoxicating liquor or a
33 controlled substance;

34 (2) RCW 46.09.130 relating to operation of nonhighway vehicles;

35 (3) RCW 46.10.090(2) relating to the operation of a snowmobile
36 while under the influence of intoxicating liquor or narcotics or
37 habit-forming drugs or in a manner endangering the person of another;

38 (4) RCW 46.10.130 relating to the operation of snowmobiles;

1 (5) Chapter 46.12 RCW relating to certificates of ownership and
2 registration and markings indicating that a vehicle has been destroyed
3 or declared a total loss;
4 (6) RCW 46.16.010 relating to initial registration of motor
5 vehicles;
6 (7) RCW 46.16.011 relating to permitting unauthorized persons to
7 drive;
8 (8) RCW 46.16.160 relating to vehicle trip permits;
9 (9) RCW 46.16.381 (6) or (9) relating to unauthorized use or
10 acquisition of a special placard or license plate for disabled persons'
11 parking;
12 (10) RCW 46.20.005 relating to driving without a valid driver's
13 license;
14 (11) RCW 46.20.091 relating to false statements regarding a
15 driver's license or instruction permit;
16 (12) RCW 46.20.336 relating to the unlawful possession and use of
17 a driver's license;
18 (13) RCW 46.20.342 relating to driving with a suspended or revoked
19 license or status;
20 (14) RCW 46.20.410 relating to the violation of restrictions of an
21 occupational driver's license;
22 (15) RCW 46.20.420 relating to the operation of a motor vehicle
23 with a suspended or revoked license;
24 (16) RCW 46.20.740 relating to operation of a motor vehicle without
25 an ignition interlock device in violation of a license notation that
26 the device is required;
27 (17) RCW 46.20.750 relating to assisting another person to start a
28 vehicle equipped with an ignition interlock device;
29 (18) RCW 46.25.170 relating to commercial driver's licenses;
30 (19) Chapter 46.29 RCW relating to financial responsibility;
31 (20) RCW 46.30.040 relating to providing false evidence of
32 financial responsibility;
33 (21) RCW 46.37.435 relating to wrongful installation of
34 sunscreening material;
35 (22) RCW 46.44.180 relating to operation of mobile home pilot
36 vehicles;
37 (23) RCW 46.48.175 relating to the transportation of dangerous
38 articles;

1 (24) RCW 46.52.010 relating to duty on striking an unattended car
2 or other property;

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

5 (26) RCW 46.52.090 relating to reports by repairmen, storagemen,
6 and appraisers;

7 (27) RCW 46.52.100 relating to driving under the influence of
8 liquor or drugs;

9 (28) RCW 46.52.130 relating to confidentiality of the driving
10 record to be furnished to an insurance company, an employer, and an
11 alcohol/drug assessment or treatment agency;

12 (29) RCW 46.55.020 relating to engaging in the activities of a
13 registered tow truck operator without a registration certificate;

14 (30) RCW 46.55.035 relating to prohibited practices by tow truck
15 operators;

16 (31) RCW 46.61.015 relating to obedience to police officers,
17 flagmen, or fire fighters;

18 (32) RCW 46.61.020 relating to refusal to give information to or
19 cooperate with an officer;

20 (33) RCW 46.61.022 relating to failure to stop and give
21 identification to an officer;

22 (34) RCW 46.61.024 relating to attempting to elude pursuing police
23 vehicles;

24 (35) RCW 46.61.500 relating to reckless driving;

25 (36) RCW 46.61.502 and 46.61.504 relating to persons under the
26 influence of intoxicating liquor or drugs;

27 (37) RCW 46.61.503 relating to a person under age twenty-one
28 driving a motor vehicle after consuming alcohol;

29 (38) RCW 46.61.520 relating to vehicular homicide by motor vehicle;

30 (39) RCW 46.61.522 relating to vehicular assault;

31 (40) RCW 46.61.5249 relating to first degree negligent driving;

32 (41) RCW 46.61.527(4) relating to reckless endangerment of roadway
33 workers;

34 (42) RCW 46.61.530 relating to racing of vehicles on highways;

35 (43) RCW 46.61.685 relating to leaving children in an unattended
36 vehicle with the motor running;

37 (44) RCW 46.61.--- (section 2 of this act) relating to aggressive
38 driving;

1 ~~(45)~~ RCW 46.64.010 relating to unlawful cancellation of or attempt
2 to cancel a traffic citation;
3 ~~((45))~~ (46) RCW 46.64.048 relating to attempting, aiding,
4 abetting, coercing, and committing crimes;
5 ~~((46))~~ (47) Chapter 46.65 RCW relating to habitual traffic
6 offenders;
7 ~~((47))~~ (48) RCW 46.68.010 relating to false statements made to
8 obtain a refund;
9 ~~((48))~~ (49) Chapter 46.70 RCW relating to unfair motor vehicle
10 business practices, except where that chapter provides for the
11 assessment of monetary penalties of a civil nature;
12 ~~((49))~~ (50) Chapter 46.72 RCW relating to the transportation of
13 passengers in for hire vehicles;
14 ~~((50))~~ (51) RCW 46.72A.060 relating to limousine carrier
15 insurance;
16 ~~((51))~~ (52) RCW 46.72A.070 relating to operation of a limousine
17 without a vehicle certificate;
18 ~~((52))~~ (53) RCW 46.72A.080 relating to false advertising by a
19 limousine carrier;
20 ~~((53))~~ (54) Chapter 46.80 RCW relating to motor vehicle wreckers;
21 ~~((54))~~ (55) Chapter 46.82 RCW relating to driver's training
22 schools;
23 ~~((55))~~ (56) RCW 46.87.260 relating to alteration or forgery of a
24 cab card, letter of authority, or other temporary authority issued
25 under chapter 46.87 RCW;
26 ~~((56))~~ (57) RCW 46.87.290 relating to operation of an
27 unregistered or unlicensed vehicle under chapter 46.87 RCW.

28 **Sec. 4.** RCW 9.94A.390 and 1997 c 52 s 4 are each amended to read
29 as follows:

30 If the sentencing court finds that an exceptional sentence outside
31 the standard range should be imposed in accordance with RCW
32 9.94A.120(2), the sentence is subject to review only as provided for in
33 RCW 9.94A.210(4).

34 The following are illustrative factors which the court may consider
35 in the exercise of its discretion to impose an exceptional sentence.
36 The following are illustrative only and are not intended to be
37 exclusive reasons for exceptional sentences.

38 (1) Mitigating Circumstances

1 (a) To a significant degree, the victim was an initiator, willing
2 participant, aggressor, or provoker of the incident.

3 (b) Before detection, the defendant compensated, or made a good
4 faith effort to compensate, the victim of the criminal conduct for any
5 damage or injury sustained.

6 (c) The defendant committed the crime under duress, coercion,
7 threat, or compulsion insufficient to constitute a complete defense but
8 which significantly affected his or her conduct.

9 (d) The defendant, with no apparent predisposition to do so, was
10 induced by others to participate in the crime.

11 (e) The defendant's capacity to appreciate the wrongfulness of his
12 or her conduct or to conform his or her conduct to the requirements of
13 the law, was significantly impaired (voluntary use of drugs or alcohol
14 is excluded).

15 (f) The offense was principally accomplished by another person and
16 the defendant manifested extreme caution or sincere concern for the
17 safety or well-being of the victim.

18 (g) The operation of the multiple offense policy of RCW 9.94A.400
19 results in a presumptive sentence that is clearly excessive in light of
20 the purpose of this chapter, as expressed in RCW 9.94A.010.

21 (h) The defendant or the defendant's children suffered a continuing
22 pattern of physical or sexual abuse by the victim of the offense and
23 the offense is a response to that abuse.

24 (2) Aggravating Circumstances

25 (a) The defendant's conduct during the commission of the current
26 offense manifested deliberate cruelty to the victim.

27 (b) The defendant knew or should have known that the victim of the
28 current offense was particularly vulnerable or incapable of resistance
29 due to extreme youth, advanced age, disability, or ill health.

30 (c) The current offense was a violent offense, and the defendant
31 knew that the victim of the current offense was pregnant.

32 (d) The current offense was a major economic offense or series of
33 offenses, so identified by a consideration of any of the following
34 factors:

35 (i) The current offense involved multiple victims or multiple
36 incidents per victim;

37 (ii) The current offense involved attempted or actual monetary loss
38 substantially greater than typical for the offense;

1 (iii) The current offense involved a high degree of sophistication
2 or planning or occurred over a lengthy period of time; or

3 (iv) The defendant used his or her position of trust, confidence,
4 or fiduciary responsibility to facilitate the commission of the current
5 offense.

6 (e) The current offense was a major violation of the Uniform
7 Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to
8 trafficking in controlled substances, which was more onerous than the
9 typical offense of its statutory definition: The presence of ANY of
10 the following may identify a current offense as a major VUCSA:

11 (i) The current offense involved at least three separate
12 transactions in which controlled substances were sold, transferred, or
13 possessed with intent to do so;

14 (ii) The current offense involved an attempted or actual sale or
15 transfer of controlled substances in quantities substantially larger
16 than for personal use;

17 (iii) The current offense involved the manufacture of controlled
18 substances for use by other parties;

19 (iv) The circumstances of the current offense reveal the offender
20 to have occupied a high position in the drug distribution hierarchy;

21 (v) The current offense involved a high degree of sophistication or
22 planning or occurred over a lengthy period of time or involved a broad
23 geographic area of disbursement; or

24 (vi) The offender used his or her position or status to facilitate
25 the commission of the current offense, including positions of trust,
26 confidence or fiduciary responsibility (e.g., pharmacist, physician, or
27 other medical professional).

28 (f) The current offense included a finding of sexual motivation
29 pursuant to RCW 9.94A.127.

30 (g) The offense was part of an ongoing pattern of sexual abuse of
31 the same victim under the age of eighteen years manifested by multiple
32 incidents over a prolonged period of time.

33 (h) The current offense involved domestic violence, as defined in
34 RCW 10.99.020 and one or more of the following was present:

35 (i) The offense was part of an ongoing pattern of psychological,
36 physical, or sexual abuse of the victim manifested by multiple
37 incidents over a prolonged period of time;

38 (ii) The offense occurred within sight or sound of the victim's or
39 the offender's minor children under the age of eighteen years; or

1 (iii) The offender's conduct during the commission of the current
2 offense manifested deliberate cruelty or intimidation of the victim.

3 (i) The operation of the multiple offense policy of RCW 9.94A.400
4 results in a presumptive sentence that is clearly too lenient in light
5 of the purpose of this chapter, as expressed in RCW 9.94A.010.

6 (j) The defendant's prior unscored misdemeanor or prior unscored
7 foreign criminal history results in a presumptive sentence that is
8 clearly too lenient in light of the purpose of this chapter as
9 expressed in RCW 9.94A.010.

10 (k) The offense resulted in the pregnancy of a child victim of
11 rape.

12 (l) The offender's conduct during or leading to the offense
13 included an act of aggressive driving as defined in section 2(3) of
14 this act.

15 **Sec. 5.** RCW 13.40.150 and 1997 c 338 s 24 are each amended to read
16 as follows:

17 (1) In disposition hearings all relevant and material evidence,
18 including oral and written reports, may be received by the court and
19 may be relied upon to the extent of its probative value, even though
20 such evidence may not be admissible in a hearing on the information.
21 The youth or the youth's counsel and the prosecuting attorney shall be
22 afforded an opportunity to examine and controvert written reports so
23 received and to cross-examine individuals making reports when such
24 individuals are reasonably available, but sources of confidential
25 information need not be disclosed. The prosecutor and counsel for the
26 juvenile may submit recommendations for disposition.

27 (2) For purposes of disposition:

28 (a) Violations which are current offenses count as misdemeanors;

29 (b) Violations may not count as part of the offender's criminal
30 history;

31 (c) In no event may a disposition for a violation include
32 confinement.

33 (3) Before entering a dispositional order as to a respondent found
34 to have committed an offense, the court shall hold a disposition
35 hearing, at which the court shall:

36 (a) Consider the facts supporting the allegations of criminal
37 conduct by the respondent;

1 (b) Consider information and arguments offered by parties and their
2 counsel;

3 (c) Consider any predisposition reports;

4 (d) Consult with the respondent's parent, guardian, or custodian on
5 the appropriateness of dispositional options under consideration and
6 afford the respondent and the respondent's parent, guardian, or
7 custodian an opportunity to speak in the respondent's behalf;

8 (e) Allow the victim or a representative of the victim and an
9 investigative law enforcement officer to speak;

10 (f) Determine the amount of restitution owing to the victim, if
11 any, or set a hearing for a later date to determine the amount;

12 (g) Determine the respondent's offender score;

13 (h) Consider whether or not any of the following mitigating factors
14 exist:

15 (i) The respondent's conduct neither caused nor threatened serious
16 bodily injury or the respondent did not contemplate that his or her
17 conduct would cause or threaten serious bodily injury;

18 (ii) The respondent acted under strong and immediate provocation;

19 (iii) The respondent was suffering from a mental or physical
20 condition that significantly reduced his or her culpability for the
21 offense though failing to establish a defense;

22 (iv) Prior to his or her detection, the respondent compensated or
23 made a good faith attempt to compensate the victim for the injury or
24 loss sustained; and

25 (v) There has been at least one year between the respondent's
26 current offense and any prior criminal offense;

27 (i) Consider whether or not any of the following aggravating
28 factors exist:

29 (i) In the commission of the offense, or in flight therefrom, the
30 respondent inflicted or attempted to inflict serious bodily injury to
31 another;

32 (ii) The offense was committed in an especially heinous, cruel, or
33 depraved manner;

34 (iii) The victim or victims were particularly vulnerable;

35 (iv) The respondent has a recent criminal history or has failed to
36 comply with conditions of a recent dispositional order or diversion
37 agreement;

38 (v) The current offense included a finding of sexual motivation
39 pursuant to RCW 13.40.135;

1 (vi) The respondent was the leader of a criminal enterprise
2 involving several persons;

3 (vii) There are other complaints which have resulted in diversion
4 or a finding or plea of guilty but which are not included as criminal
5 history; (~~and~~)

6 (viii) The standard range disposition is clearly too lenient
7 considering the seriousness of the juvenile's prior adjudications; and

8 (ix) The respondent's conduct during or leading to the offense
9 included an act of aggressive driving as defined in section 2(3) of
10 this act.

11 (4) The following factors may not be considered in determining the
12 punishment to be imposed:

13 (a) The sex of the respondent;

14 (b) The race or color of the respondent or the respondent's family;

15 (c) The creed or religion of the respondent or the respondent's
16 family;

17 (d) The economic or social class of the respondent or the
18 respondent's family; and

19 (e) Factors indicating that the respondent may be or is a dependent
20 child within the meaning of this chapter.

21 (5) A court may not commit a juvenile to a state institution solely
22 because of the lack of facilities, including treatment facilities,
23 existing in the community.

24 NEW SECTION. **Sec. 6.** This act takes effect July 1, 1998.

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