

2 **HB 1165** - S COMM AMD
3 By Committee on Law & Justice

4 ADOPTED 2/27/98

5 Strike everything after the enacting clause and insert the
6 following:

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 88.12 RCW
8 to read as follows:

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

13 (a) While under the influence of intoxicating liquor or any drug,
14 as defined by RCW 88.12.025;

15 (b) In a reckless manner; or

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

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

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

21 NEW SECTION. **Sec. 2.** A new section is added to chapter 88.12 RCW
22 to read as follows:

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

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

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

31 (b) While under the influence of intoxicating liquor or any drug,
32 as defined by RCW 88.12.025, and this conduct is the proximate cause of
33 serious bodily injury to another.

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

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

3 NEW SECTION. **Sec. 3.** A new section is added to chapter 88.12 RCW
4 to read as follows:

5 A person convicted under section 1 or 2 of this act shall, as a
6 condition of community supervision imposed under RCW 9.94A.383 or
7 community placement imposed under RCW 9.94A.120(9), complete a
8 diagnostic evaluation by an alcohol or drug dependency agency approved
9 by the department of social and health services or a qualified
10 probation department, defined under RCW 46.61.516, that has been
11 approved by the department of social and health services. If the
12 person is found to have an alcohol or drug problem that requires
13 treatment, the person shall complete treatment in a program approved by
14 the department of social and health services under chapter 70.96A RCW.
15 If the person is found not to have an alcohol or drug problem that
16 requires treatment, he or she shall complete a course in an information
17 school approved by the department of social and health services under
18 chapter 70.96A RCW. The convicted person shall pay all costs for any
19 evaluation, education, or treatment required by this section, unless
20 the person is eligible for an existing program offered or approved by
21 the department of social and health services. Nothing in chapter ...,
22 Laws of 1998 (this act) requires the addition of new treatment or
23 assessment facilities nor affects the department of social and health
24 services use of existing programs and facilities authorized by law.

25 **Sec. 4.** RCW 9.94A.320 and 1997 c 365 s 4, 1997 c 346 s 3, 1997 c
26 340 s 1, 1997 c 338 s 51, 1997 c 266 s 15, and 1997 c 120 s 5 are each
27 reenacted and amended to read as follows:

28 TABLE 2

29 CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

30	XV	Aggravated Murder 1 (RCW 10.95.020)
31	XIV	Murder 1 (RCW 9A.32.030)
32		Homicide by abuse (RCW 9A.32.055)
33		Malicious explosion 1 (RCW 70.74.280(1))
34	XIII	Murder 2 (RCW 9A.32.050)
35		Malicious explosion 2 (RCW 70.74.280(2))

1 Malicious placement of an explosive 1 (RCW
2 70.74.270(1))

3 XII Assault 1 (RCW 9A.36.011)
4 Assault of a Child 1 (RCW 9A.36.120)
5 Rape 1 (RCW 9A.44.040)
6 Rape of a Child 1 (RCW 9A.44.073)
7 Malicious placement of an imitation device
8 1 (RCW 70.74.272(1)(a))

9 XI Rape 2 (RCW 9A.44.050)
10 Rape of a Child 2 (RCW 9A.44.076)
11 Manslaughter 1 (RCW 9A.32.060)

12 X Kidnapping 1 (RCW 9A.40.020)
13 Child Molestation 1 (RCW 9A.44.083)
14 Malicious explosion 3 (RCW 70.74.280(3))
15 Over 18 and deliver heroin or narcotic from
16 Schedule I or II to someone under 18
17 (RCW 69.50.406)
18 Leading Organized Crime (RCW
19 9A.82.060(1)(a))
20 Indecent Liberties (with forcible
21 compulsion) (RCW 9A.44.100(1)(a))

22 IX Assault of a Child 2 (RCW 9A.36.130)
23 Robbery 1 (RCW 9A.56.200)
24 Explosive devices prohibited (RCW
25 70.74.180)
26 Malicious placement of an explosive 2 (RCW
27 70.74.270(2))
28 Over 18 and deliver narcotic from Schedule
29 III, IV, or V or a nonnarcotic from
30 Schedule I-V to someone under 18 and 3
31 years junior (RCW 69.50.406)
32 Controlled Substance Homicide (RCW
33 69.50.415)
34 Sexual Exploitation (RCW 9.68A.040)
35 Inciting Criminal Profiteering (RCW
36 9A.82.060(1)(b))

1 Vehicular Homicide, by being under the
2 influence of intoxicating liquor or
3 any drug (RCW 46.61.520)
4 Homicide by Watercraft, by being under the
5 influence of intoxicating liquor or
6 any drug (section 1 of this act)

7 VIII Arson 1 (RCW 9A.48.020)
8 Promoting Prostitution 1 (RCW 9A.88.070)
9 Selling for profit (controlled or
10 counterfeit) any controlled substance
11 (RCW 69.50.410)
12 Manufacture, deliver, or possess with
13 intent to deliver heroin or cocaine
14 (RCW 69.50.401(a)(1)(i))
15 Manufacture, deliver, or possess with
16 intent to deliver methamphetamine
17 (RCW 69.50.401(a)(1)(ii))
18 Possession of ephedrine or pseudoephedrine
19 with intent to manufacture
20 methamphetamine (RCW 69.50.440)
21 Vehicular Homicide, by the operation of
22 any vehicle in a reckless manner (RCW
23 46.61.520)
24 Homicide by Watercraft, by the operation
25 of any vessel in a reckless manner
26 (section 1 of this act)

27 Manslaughter 2 (RCW 9A.32.070)

28 VII Burglary 1 (RCW 9A.52.020)
29 Vehicular Homicide, by disregard for the
30 safety of others (RCW 46.61.520)
31 Homicide by Watercraft, by disregard for
32 the safety of others (section 1 of
33 this act)

34 Introducing Contraband 1 (RCW 9A.76.140)
35 Indecent Liberties (without forcible
36 compulsion) (RCW 9A.44.100(1) (b) and
37 (c))
38 Child Molestation 2 (RCW 9A.44.086)

1 Dealing in depictions of minor engaged in
2 sexually explicit conduct (RCW
3 9.68A.050)
4 Sending, bringing into state depictions of
5 minor engaged in sexually explicit
6 conduct (RCW 9.68A.060)
7 Involving a minor in drug dealing (RCW
8 69.50.401(f))
9 Drive-by Shooting (RCW 9A.36.045)
10 Unlawful Possession of a Firearm in the
11 first degree (RCW 9.41.040(1)(a))
12 Malicious placement of an explosive 3 (RCW
13 70.74.270(3))
14 VI Bribery (RCW 9A.68.010)
15 Rape of a Child 3 (RCW 9A.44.079)
16 Intimidating a Juror/Witness (RCW
17 9A.72.110, 9A.72.130)
18 Malicious placement of an imitation device
19 2 (RCW 70.74.272(1)(b))
20 Incest 1 (RCW 9A.64.020(1))
21 Manufacture, deliver, or possess with
22 intent to deliver narcotics from
23 Schedule I or II (except heroin or
24 cocaine) (RCW 69.50.401(a)(1)(i))
25 Intimidating a Judge (RCW 9A.72.160)
26 Bail Jumping with Murder 1 (RCW
27 9A.76.170(2)(a))
28 Theft of a Firearm (RCW 9A.56.300)
29 V Persistent prison misbehavior (RCW
30 9.94.070)
31 Criminal Mistreatment 1 (RCW 9A.42.020)
32 Abandonment of dependent person 1 (RCW
33 9A.42.060)
34 Rape 3 (RCW 9A.44.060)
35 Sexual Misconduct with a Minor 1 (RCW
36 9A.44.093)
37 Child Molestation 3 (RCW 9A.44.089)
38 Kidnapping 2 (RCW 9A.40.030)

1 Extortion 1 (RCW 9A.56.120)
2 Incest 2 (RCW 9A.64.020(2))
3 Perjury 1 (RCW 9A.72.020)
4 Extortionate Extension of Credit (RCW
5 9A.82.020)
6 Advancing money or property for
7 extortionate extension of credit (RCW
8 9A.82.030)
9 Extortionate Means to Collect Extensions
10 of Credit (RCW 9A.82.040)
11 Rendering Criminal Assistance 1 (RCW
12 9A.76.070)
13 Bail Jumping with class A Felony (RCW
14 9A.76.170(2)(b))
15 Sexually Violating Human Remains (RCW
16 9A.44.105)
17 Delivery of imitation controlled substance
18 by person eighteen or over to person
19 under eighteen (RCW 69.52.030(2))
20 Possession of a Stolen Firearm (RCW
21 9A.56.310)

22 IV Residential Burglary (RCW 9A.52.025)
23 Theft of Livestock 1 (RCW 9A.56.080)
24 Robbery 2 (RCW 9A.56.210)
25 Assault 2 (RCW 9A.36.021)
26 Escape 1 (RCW 9A.76.110)
27 Arson 2 (RCW 9A.48.030)
28 Commercial Bribery (RCW 9A.68.060)
29 Bribing a Witness/Bribe Received by
30 Witness (RCW 9A.72.090, 9A.72.100)
31 Malicious Harassment (RCW 9A.36.080)
32 Threats to Bomb (RCW 9.61.160)
33 Willful Failure to Return from Furlough
34 (RCW 72.66.060)
35 Hit and Run--Injury Accident (RCW
36 46.52.020(4))
37 Hit and Run with Vessel--Injury Accident
38 (RCW 88.12.155(3))
39 Vehicular Assault (RCW 46.61.522)

1 Assault by Watercraft (section 2 of this
2 act)
3 Manufacture, deliver, or possess with
4 intent to deliver narcotics from
5 Schedule III, IV, or V or
6 nonnarcotics from Schedule I-V
7 (except marijuana or
8 methamphetamines) (RCW 69.50.401
9 (a)(1) (iii) through (v))
10 Influencing Outcome of Sporting Event (RCW
11 9A.82.070)
12 Use of Proceeds of Criminal Profiteering
13 (RCW 9A.82.080 (1) and (2))
14 Knowingly Trafficking in Stolen Property
15 (RCW 9A.82.050(2))

16 III Criminal Gang Intimidation (RCW 9A.46.120)
17 Criminal Mistreatment 2 (RCW 9A.42.030)
18 Abandonment of dependent person 2 (RCW
19 9A.42.070)
20 Extortion 2 (RCW 9A.56.130)
21 Unlawful Imprisonment (RCW 9A.40.040)
22 Assault 3 (RCW 9A.36.031)
23 Assault of a Child 3 (RCW 9A.36.140)
24 Custodial Assault (RCW 9A.36.100)
25 Unlawful possession of firearm in the
26 second degree (RCW 9.41.040(1)(b))
27 Harassment (RCW 9A.46.020)
28 Promoting Prostitution 2 (RCW 9A.88.080)
29 Willful Failure to Return from Work
30 Release (RCW 72.65.070)
31 Burglary 2 (RCW 9A.52.030)
32 Introducing Contraband 2 (RCW 9A.76.150)
33 Communication with a Minor for Immoral
34 Purposes (RCW 9.68A.090)
35 Patronizing a Juvenile Prostitute (RCW
36 9.68A.100)
37 Escape 2 (RCW 9A.76.120)
38 Perjury 2 (RCW 9A.72.030)

1 Bail Jumping with class B or C Felony (RCW
2 9A.76.170(2)(c))
3 Intimidating a Public Servant (RCW
4 9A.76.180)
5 Tampering with a Witness (RCW 9A.72.120)
6 Manufacture, deliver, or possess with
7 intent to deliver marijuana (RCW
8 69.50.401(a)(1)(iii))
9 Delivery of a material in lieu of a
10 controlled substance (RCW
11 69.50.401(c))
12 Manufacture, distribute, or possess with
13 intent to distribute an imitation
14 controlled substance (RCW
15 69.52.030(1))
16 Recklessly Trafficking in Stolen Property
17 (RCW 9A.82.050(1))
18 Theft of livestock 2 (RCW 9A.56.080)
19 Securities Act violation (RCW 21.20.400)
20 II Unlawful Practice of Law (RCW 2.48.180)
21 Malicious Mischief 1 (RCW 9A.48.070)
22 Possession of Stolen Property 1 (RCW
23 9A.56.150)
24 Theft 1 (RCW 9A.56.030)
25 Class B Felony Theft of Rental, Leased, or
26 Lease-purchased Property (RCW
27 9A.56.096(4))
28 Trafficking in Insurance Claims (RCW
29 48.30A.015)
30 Unlicensed Practice of a Profession or
31 Business (RCW 18.130.190(7))
32 Health Care False Claims (RCW 48.80.030)
33 Possession of controlled substance that is
34 either heroin or narcotics from
35 Schedule I or II (RCW 69.50.401(d))
36 Possession of phencyclidine (PCP) (RCW
37 69.50.401(d))

1 Create, deliver, or possess a counterfeit
2 controlled substance (RCW
3 69.50.401(b))
4 Computer Trespass 1 (RCW 9A.52.110)
5 Escape from Community Custody (RCW
6 72.09.310)

7 I Theft 2 (RCW 9A.56.040)
8 Class C Felony Theft of Rental, Leased, or
9 Lease-purchased Property (RCW
10 9A.56.096(4))
11 Possession of Stolen Property 2 (RCW
12 9A.56.160)
13 Forgery (RCW 9A.60.020)
14 Taking Motor Vehicle Without Permission
15 (RCW 9A.56.070)
16 Vehicle Prowl 1 (RCW 9A.52.095)
17 Attempting to Elude a Pursuing Police
18 Vehicle (RCW 46.61.024)
19 Malicious Mischief 2 (RCW 9A.48.080)
20 Reckless Burning 1 (RCW 9A.48.040)
21 Unlawful Issuance of Checks or Drafts (RCW
22 9A.56.060)
23 Unlawful Use of Food Stamps (RCW 9.91.140
24 (2) and (3))
25 False Verification for Welfare (RCW
26 74.08.055)
27 Forged Prescription (RCW 69.41.020)
28 Forged Prescription for a Controlled
29 Substance (RCW 69.50.403)
30 Possess Controlled Substance that is a
31 Narcotic from Schedule III, IV, or V
32 or Non-narcotic from Schedule I-V
33 (except phencyclidine) (RCW
34 69.50.401(d))

35 **Sec. 5.** RCW 88.12.010 and 1997 c 391 s 1 are each amended to read
36 as follows:

37 Unless the context clearly requires otherwise, the definitions in
38 this section apply throughout this chapter.

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

5 (2) "Boater" means any person on a vessel on waters of the state of
6 Washington.

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

16 (4) "Commission" means the state parks and recreation commission.

17 (5) "Darkness" means that period between sunset and sunrise.

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

23 (7) "Guide" means any individual, including but not limited to
24 subcontractors and independent contractors, engaged for compensation or
25 other consideration by a whitewater river outfitter for the purpose of
26 operating vessels. A person licensed under RCW 77.32.211 or 75.28.780
27 and acting as a fishing guide is not considered a guide for the
28 purposes of this chapter.

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

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

34 (10) "Muffler" or "muffler system" means a sound suppression device
35 or system, including an underwater exhaust system, designed and
36 installed to abate the sound of exhaust gases emitted from an internal
37 combustion engine and that prevents excessive or unusual noise.

38 (11) "Operate" means to steer, direct, or otherwise have physical
39 control of a vessel that is underway.

1 (12) "Operator" means an individual who steers, directs, or
2 otherwise has physical control of a vessel that is underway or
3 exercises actual authority to control the person at the helm.

4 (13) "Observer" means the individual riding in a vessel who is
5 responsible for observing a water skier at all times.

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

9 (15) "Person" means any individual, sole proprietorship,
10 partnership, corporation, nonprofit corporation or organization,
11 limited liability company, firm, association, or other legal entity
12 located within or outside this state.

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

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

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

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

27 (20) "Reckless" or "recklessly" means acting carelessly and
28 heedlessly in a willful and wanton disregard of the rights, safety, or
29 property of another.

30 (21) "Sewage pumpout or dump unit" means:

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

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

36 (22) "Underway" means that a vessel is not at anchor, or made fast
37 to the shore, or aground.

38 (23) "Vessel" includes every description of watercraft on the
39 water, other than a seaplane, used or capable of being used as a means

1 of transportation on the water. However, it does not include inner
2 tubes, air mattresses, sailboards, and small rafts or flotation devices
3 or toys customarily used by swimmers.

4 (24) "Water skiing" means the physical act of being towed behind a
5 vessel on, but not limited to, any skis, aquaplane, kneeboard, tube, or
6 any other similar device.

7 (25) "Waters of the state" means any waters within the territorial
8 limits of Washington state.

9 (26) "Whitewater river outfitter" means any person who is
10 advertising to carry or carries passengers for hire on any whitewater
11 river of the state, but does not include any person whose only service
12 on a given trip is providing instruction in canoeing or kayaking
13 skills.

14 (27) "Whitewater rivers of the state" means those rivers and
15 streams, or parts thereof, within the boundaries of the state as listed
16 in RCW 88.12.265 or as designated by the commission under RCW
17 88.12.279."

18 **HB 1165** - S COMM AMD
19 By Committee on Law & Justice

20 ADOPTED 2/27/98

21 On page 1, line 1 of the title, after "watercraft;" strike the
22 remainder of the title and insert "amending RCW 88.12.010; reenacting
23 and amending RCW 9.94A.320; adding new sections to chapter 88.12 RCW;
24 and prescribing penalties."

--- END ---