

CERTIFICATION OF ENROLLMENT

HOUSE BILL 1165

55th Legislature
1998 Regular Session

Passed by the House March 9, 1998
Yeas 96 Nays 0

**Speaker of the
House of Representatives**

Passed by the Senate February 27, 1998
Yeas 47 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Timothy A. Martin, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 1165** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

HOUSE BILL 1165

AS AMENDED BY THE SENATE

Passed Legislature - 1998 Regular Session

State of Washington 55th Legislature 1997 Regular Session

By Representatives Backlund, O'Brien, Skinner, Cairnes, Dyer, Dunn, Lambert, Sherstad, Sterk, Delvin and Mielke

Read first time 01/16/97. Referred to Committee on Law & Justice.

1 AN ACT Relating to homicide or assault by watercraft; amending RCW
2 88.12.010; reenacting and amending RCW 9.94A.320; adding new sections
3 to chapter 88.12 RCW; and prescribing penalties.

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

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

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

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

13 (b) In a reckless manner; or

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

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

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

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

3 (1) "Serious bodily injury" means bodily injury which involves a
4 substantial risk of death, serious permanent disfigurement, or
5 protracted loss or impairment of the function of any part or organ of
6 the body.

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

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

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

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

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

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

20 A person convicted under section 1 or 2 of this act shall, as a
21 condition of community supervision imposed under RCW 9.94A.383 or
22 community placement imposed under RCW 9.94A.120(9), complete a
23 diagnostic evaluation by an alcohol or drug dependency agency approved
24 by the department of social and health services or a qualified
25 probation department, defined under RCW 46.61.516, that has been
26 approved by the department of social and health services. If the
27 person is found to have an alcohol or drug problem that requires
28 treatment, the person shall complete treatment in a program approved by
29 the department of social and health services under chapter 70.96A RCW.
30 If the person is found not to have an alcohol or drug problem that
31 requires treatment, he or she shall complete a course in an information
32 school approved by the department of social and health services under
33 chapter 70.96A RCW. The convicted person shall pay all costs for any
34 evaluation, education, or treatment required by this section, unless
35 the person is eligible for an existing program offered or approved by
36 the department of social and health services. Nothing in chapter ...,
37 Laws of 1998 (this act) requires the addition of new treatment or

1 assessment facilities nor affects the department of social and health
2 services use of existing programs and facilities authorized by law.

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

6 TABLE 2

7 CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

8	XV	Aggravated Murder 1 (RCW 10.95.020)
9	XIV	Murder 1 (RCW 9A.32.030)
10		Homicide by abuse (RCW 9A.32.055)
11		Malicious explosion 1 (RCW 70.74.280(1))
12	XIII	Murder 2 (RCW 9A.32.050)
13		Malicious explosion 2 (RCW 70.74.280(2))
14		Malicious placement of an explosive 1 (RCW
15		70.74.270(1))
16	XII	Assault 1 (RCW 9A.36.011)
17		Assault of a Child 1 (RCW 9A.36.120)
18		Rape 1 (RCW 9A.44.040)
19		Rape of a Child 1 (RCW 9A.44.073)
20		Malicious placement of an imitation device
21		1 (RCW 70.74.272(1)(a))
22	XI	Rape 2 (RCW 9A.44.050)
23		Rape of a Child 2 (RCW 9A.44.076)
24		Manslaughter 1 (RCW 9A.32.060)
25	X	Kidnapping 1 (RCW 9A.40.020)
26		Child Molestation 1 (RCW 9A.44.083)
27		Malicious explosion 3 (RCW 70.74.280(3))
28		Over 18 and deliver heroin or narcotic from
29		Schedule I or II to someone under 18
30		(RCW 69.50.406)
31		Leading Organized Crime (RCW
32		9A.82.060(1)(a))
33		Indecent Liberties (with forcible
34		compulsion) (RCW 9A.44.100(1)(a))

1 IX Assault of a Child 2 (RCW 9A.36.130)
2 Robbery 1 (RCW 9A.56.200)
3 Explosive devices prohibited (RCW
4 70.74.180)
5 Malicious placement of an explosive 2 (RCW
6 70.74.270(2))
7 Over 18 and deliver narcotic from Schedule
8 III, IV, or V or a nonnarcotic from
9 Schedule I-V to someone under 18 and 3
10 years junior (RCW 69.50.406)
11 Controlled Substance Homicide (RCW
12 69.50.415)
13 Sexual Exploitation (RCW 9.68A.040)
14 Inciting Criminal Profiteering (RCW
15 9A.82.060(1)(b))
16 Vehicular Homicide, by being under the
17 influence of intoxicating liquor or
18 any drug (RCW 46.61.520)
19 Homicide by Watercraft, by being under the
20 influence of intoxicating liquor or
21 any drug (section 1 of this act)

22 VIII Arson 1 (RCW 9A.48.020)
23 Promoting Prostitution 1 (RCW 9A.88.070)
24 Selling for profit (controlled or
25 counterfeit) any controlled substance
26 (RCW 69.50.410)
27 Manufacture, deliver, or possess with
28 intent to deliver heroin or cocaine
29 (RCW 69.50.401(a)(1)(i))
30 Manufacture, deliver, or possess with
31 intent to deliver methamphetamine
32 (RCW 69.50.401(a)(1)(ii))
33 Possession of ephedrine or pseudoephedrine
34 with intent to manufacture
35 methamphetamine (RCW 69.50.440)
36 Vehicular Homicide, by the operation of
37 any vehicle in a reckless manner (RCW
38 46.61.520)

1 Homicide by Watercraft, by the operation
2 of any vessel in a reckless manner
3 (section 1 of this act)
4 Manslaughter 2 (RCW 9A.32.070)

5 VII Burglary 1 (RCW 9A.52.020)

6 Vehicular Homicide, by disregard for the
7 safety of others (RCW 46.61.520)

8 Homicide by Watercraft, by disregard for
9 the safety of others (section 1 of
10 this act)

11 Introducing Contraband 1 (RCW 9A.76.140)

12 Indecent Liberties (without forcible
13 compulsion) (RCW 9A.44.100(1) (b) and
14 (c))

15 Child Molestation 2 (RCW 9A.44.086)

16 Dealing in depictions of minor engaged in
17 sexually explicit conduct (RCW
18 9.68A.050)

19 Sending, bringing into state depictions of
20 minor engaged in sexually explicit
21 conduct (RCW 9.68A.060)

22 Involving a minor in drug dealing (RCW
23 69.50.401(f))

24 Drive-by Shooting (RCW 9A.36.045)

25 Unlawful Possession of a Firearm in the
26 first degree (RCW 9.41.040(1)(a))

27 Malicious placement of an explosive 3 (RCW
28 70.74.270(3))

29 VI Bribery (RCW 9A.68.010)

30 Rape of a Child 3 (RCW 9A.44.079)

31 Intimidating a Juror/Witness (RCW
32 9A.72.110, 9A.72.130)

33 Malicious placement of an imitation device
34 2 (RCW 70.74.272(1)(b))

35 Incest 1 (RCW 9A.64.020(1))

36 Manufacture, deliver, or possess with
37 intent to deliver narcotics from

1 Schedule I or II (except heroin or
2 cocaine) (RCW 69.50.401(a)(1)(i))
3 Intimidating a Judge (RCW 9A.72.160)
4 Bail Jumping with Murder 1 (RCW
5 9A.76.170(2)(a))
6 Theft of a Firearm (RCW 9A.56.300)

7 V Persistent prison misbehavior (RCW
8 9.94.070)
9 Criminal Mistreatment 1 (RCW 9A.42.020)
10 Abandonment of dependent person 1 (RCW
11 9A.42.060)
12 Rape 3 (RCW 9A.44.060)
13 Sexual Misconduct with a Minor 1 (RCW
14 9A.44.093)
15 Child Molestation 3 (RCW 9A.44.089)
16 Kidnapping 2 (RCW 9A.40.030)
17 Extortion 1 (RCW 9A.56.120)
18 Incest 2 (RCW 9A.64.020(2))
19 Perjury 1 (RCW 9A.72.020)
20 Extortionate Extension of Credit (RCW
21 9A.82.020)
22 Advancing money or property for
23 extortionate extension of credit (RCW
24 9A.82.030)
25 Extortionate Means to Collect Extensions
26 of Credit (RCW 9A.82.040)
27 Rendering Criminal Assistance 1 (RCW
28 9A.76.070)
29 Bail Jumping with class A Felony (RCW
30 9A.76.170(2)(b))
31 Sexually Violating Human Remains (RCW
32 9A.44.105)
33 Delivery of imitation controlled substance
34 by person eighteen or over to person
35 under eighteen (RCW 69.52.030(2))
36 Possession of a Stolen Firearm (RCW
37 9A.56.310)

38 IV Residential Burglary (RCW 9A.52.025)

1 Theft of Livestock 1 (RCW 9A.56.080)
2 Robbery 2 (RCW 9A.56.210)
3 Assault 2 (RCW 9A.36.021)
4 Escape 1 (RCW 9A.76.110)
5 Arson 2 (RCW 9A.48.030)
6 Commercial Bribery (RCW 9A.68.060)
7 Bribing a Witness/Bribe Received by
8 Witness (RCW 9A.72.090, 9A.72.100)
9 Malicious Harassment (RCW 9A.36.080)
10 Threats to Bomb (RCW 9.61.160)
11 Willful Failure to Return from Furlough
12 (RCW 72.66.060)
13 Hit and Run--Injury Accident (RCW
14 46.52.020(4))
15 Hit and Run with Vessel--Injury Accident
16 (RCW 88.12.155(3))
17 Vehicular Assault (RCW 46.61.522)
18 Assault by Watercraft (section 2 of this
19 act)
20 Manufacture, deliver, or possess with
21 intent to deliver narcotics from
22 Schedule III, IV, or V or
23 nonnarcotics from Schedule I-V
24 (except marijuana or
25 methamphetamines) (RCW 69.50.401
26 (a)(1) (iii) through (v))
27 Influencing Outcome of Sporting Event (RCW
28 9A.82.070)
29 Use of Proceeds of Criminal Profiteering
30 (RCW 9A.82.080 (1) and (2))
31 Knowingly Trafficking in Stolen Property
32 (RCW 9A.82.050(2))
33 III Criminal Gang Intimidation (RCW 9A.46.120)
34 Criminal Mistreatment 2 (RCW 9A.42.030)
35 Abandonment of dependent person 2 (RCW
36 9A.42.070)
37 Extortion 2 (RCW 9A.56.130)
38 Unlawful Imprisonment (RCW 9A.40.040)
39 Assault 3 (RCW 9A.36.031)

1 Assault of a Child 3 (RCW 9A.36.140)
2 Custodial Assault (RCW 9A.36.100)
3 Unlawful possession of firearm in the
4 second degree (RCW 9.41.040(1)(b))
5 Harassment (RCW 9A.46.020)
6 Promoting Prostitution 2 (RCW 9A.88.080)
7 Willful Failure to Return from Work
8 Release (RCW 72.65.070)
9 Burglary 2 (RCW 9A.52.030)
10 Introducing Contraband 2 (RCW 9A.76.150)
11 Communication with a Minor for Immoral
12 Purposes (RCW 9.68A.090)
13 Patronizing a Juvenile Prostitute (RCW
14 9.68A.100)
15 Escape 2 (RCW 9A.76.120)
16 Perjury 2 (RCW 9A.72.030)
17 Bail Jumping with class B or C Felony (RCW
18 9A.76.170(2)(c))
19 Intimidating a Public Servant (RCW
20 9A.76.180)
21 Tampering with a Witness (RCW 9A.72.120)
22 Manufacture, deliver, or possess with
23 intent to deliver marijuana (RCW
24 69.50.401(a)(1)(iii))
25 Delivery of a material in lieu of a
26 controlled substance (RCW
27 69.50.401(c))
28 Manufacture, distribute, or possess with
29 intent to distribute an imitation
30 controlled substance (RCW
31 69.52.030(1))
32 Recklessly Trafficking in Stolen Property
33 (RCW 9A.82.050(1))
34 Theft of livestock 2 (RCW 9A.56.080)
35 Securities Act violation (RCW 21.20.400)
36 II Unlawful Practice of Law (RCW 2.48.180)
37 Malicious Mischief 1 (RCW 9A.48.070)
38 Possession of Stolen Property 1 (RCW
39 9A.56.150)

1 Theft 1 (RCW 9A.56.030)
2 Class B Felony Theft of Rental, Leased, or
3 Lease-purchased Property (RCW
4 9A.56.096(4))
5 Trafficking in Insurance Claims (RCW
6 48.30A.015)
7 Unlicensed Practice of a Profession or
8 Business (RCW 18.130.190(7))
9 Health Care False Claims (RCW 48.80.030)
10 Possession of controlled substance that is
11 either heroin or narcotics from
12 Schedule I or II (RCW 69.50.401(d))
13 Possession of phencyclidine (PCP) (RCW
14 69.50.401(d))
15 Create, deliver, or possess a counterfeit
16 controlled substance (RCW
17 69.50.401(b))
18 Computer Trespass 1 (RCW 9A.52.110)
19 Escape from Community Custody (RCW
20 72.09.310)

21 I Theft 2 (RCW 9A.56.040)
22 Class C Felony Theft of Rental, Leased, or
23 Lease-purchased Property (RCW
24 9A.56.096(4))
25 Possession of Stolen Property 2 (RCW
26 9A.56.160)
27 Forgery (RCW 9A.60.020)
28 Taking Motor Vehicle Without Permission
29 (RCW 9A.56.070)
30 Vehicle Prowl 1 (RCW 9A.52.095)
31 Attempting to Elude a Pursuing Police
32 Vehicle (RCW 46.61.024)
33 Malicious Mischief 2 (RCW 9A.48.080)
34 Reckless Burning 1 (RCW 9A.48.040)
35 Unlawful Issuance of Checks or Drafts (RCW
36 9A.56.060)
37 Unlawful Use of Food Stamps (RCW 9.91.140
38 (2) and (3))

1 False Verification for Welfare (RCW
2 74.08.055)
3 Forged Prescription (RCW 69.41.020)
4 Forged Prescription for a Controlled
5 Substance (RCW 69.50.403)
6 Possess Controlled Substance that is a
7 Narcotic from Schedule III, IV, or V
8 or Non-narcotic from Schedule I-V
9 (except phencyclidine) (RCW
10 69.50.401(d))

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

13 Unless the context clearly requires otherwise, the definitions in
14 this section apply throughout this chapter.

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

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

21 (3) "Carrying passengers for hire" means carrying passengers in a
22 vessel on waters of the state for valuable consideration, whether given
23 directly or indirectly or received by the owner, agent, operator, or
24 other person having an interest in the vessel. This shall not include
25 trips where expenses for food, transportation, or incidentals are
26 shared by participants on an even basis. Anyone receiving compensation
27 for skills or money for amortization of equipment and carrying
28 passengers shall be considered to be carrying passengers for hire on
29 waters of the state.

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

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

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

37 (7) "Guide" means any individual, including but not limited to
38 subcontractors and independent contractors, engaged for compensation or

1 other consideration by a whitewater river outfitter for the purpose of
2 operating vessels. A person licensed under RCW 77.32.211 or 75.28.780
3 and acting as a fishing guide is not considered a guide for the
4 purposes of this chapter.

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

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

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

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

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

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

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

24 (15) "Person" means any individual, sole proprietorship,
25 partnership, corporation, nonprofit corporation or organization,
26 limited liability company, firm, association, or other legal entity
27 located within or outside this state.

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (27) "Whitewater rivers of the state" means those rivers and
31 streams, or parts thereof, within the boundaries of the state as listed
32 in RCW 88.12.265 or as designated by the commission under RCW
33 88.12.279.

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