
SENATE BILL 5478

State of Washington 55th Legislature 1997 Regular Session

By Senators Benton, Zarelli, Stevens, Oke and Winsley

Read first time 01/28/97. Referred to Committee on Law & Justice.

1 AN ACT Relating to allowable blood alcohol concentration; amending
2 RCW 46.61.502, 46.61.504, and 88.12.025; and prescribing penalties.

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

4 **Sec. 1.** RCW 46.61.502 and 1994 c 275 s 2 are each amended to read
5 as follows:

6 (1) A person is guilty of driving while under the influence of
7 intoxicating liquor or any drug if the person drives a vehicle within
8 this state:

9 (a) And the person has, within two hours after driving, an alcohol
10 concentration of (~~0.10~~) 0.08 or higher as shown by analysis of the
11 person's breath or blood made under RCW 46.61.506; or

12 (b) While the person is under the influence of or affected by
13 intoxicating liquor or any drug; or

14 (c) While the person is under the combined influence of or affected
15 by intoxicating liquor and any drug.

16 (2) The fact that a person charged with a violation of this section
17 is or has been entitled to use a drug under the laws of this state
18 shall not constitute a defense against a charge of violating this
19 section.

1 (3) It is an affirmative defense to a violation of subsection
2 (1)(a) of this section which the defendant must prove by a
3 preponderance of the evidence that the defendant consumed a sufficient
4 quantity of alcohol after the time of driving and before the
5 administration of an analysis of the person's breath or blood to cause
6 the defendant's alcohol concentration to be (~~0.10~~) 0.08 or more
7 within two hours after driving. The court shall not admit evidence of
8 this defense unless the defendant notifies the prosecution prior to the
9 omnibus or pretrial hearing in the case of the defendant's intent to
10 assert the affirmative defense.

11 (4) Analyses of blood or breath samples obtained more than two
12 hours after the alleged driving may be used as evidence that within two
13 hours of the alleged driving, a person had an alcohol concentration of
14 (~~0.10~~) 0.08 or more in violation of subsection (1)(a) of this
15 section, and in any case in which the analysis shows an alcohol
16 concentration above 0.00 may be used as evidence that a person was
17 under the influence of or affected by intoxicating liquor or any drug
18 in violation of subsection (1)(b) or (c) of this section.

19 (5) A violation of this section is a gross misdemeanor.

20 **Sec. 2.** RCW 46.61.504 and 1994 c 275 s 3 are each amended to read
21 as follows:

22 (1) A person is guilty of being in actual physical control of a
23 motor vehicle while under the influence of intoxicating liquor or any
24 drug if the person has actual physical control of a vehicle within this
25 state:

26 (a) And the person has, within two hours after being in actual
27 physical control of the vehicle, an alcohol concentration of (~~0.10~~)
28 0.08 or higher as shown by analysis of the person's breath or blood
29 made under RCW 46.61.506; or

30 (b) While the person is under the influence of or affected by
31 intoxicating liquor or any drug; or

32 (c) While the person is under the combined influence of or affected
33 by intoxicating liquor and any drug.

34 (2) The fact that a person charged with a violation of this section
35 is or has been entitled to use a drug under the laws of this state does
36 not constitute a defense against any charge of violating this section.
37 No person may be convicted under this section if, prior to being

1 pursued by a law enforcement officer, the person has moved the vehicle
2 safely off the roadway.

3 (3) It is an affirmative defense to a violation of subsection
4 (1)(a) of this section which the defendant must prove by a
5 preponderance of the evidence that the defendant consumed a sufficient
6 quantity of alcohol after the time of being in actual physical control
7 of the vehicle and before the administration of an analysis of the
8 person's breath or blood to cause the defendant's alcohol concentration
9 to be ((0.10)) 0.08 or more within two hours after being in such
10 control. The court shall not admit evidence of this defense unless the
11 defendant notifies the prosecution prior to the omnibus or pretrial
12 hearing in the case of the defendant's intent to assert the affirmative
13 defense.

14 (4) Analyses of blood or breath samples obtained more than two
15 hours after the alleged being in actual physical control of a vehicle
16 may be used as evidence that within two hours of the alleged being in
17 such control, a person had an alcohol concentration of ((0.10)) 0.08 or
18 more in violation of subsection (1)(a) of this section, and in any case
19 in which the analysis shows an alcohol concentration above 0.00 may be
20 used as evidence that a person was under the influence of or affected
21 by intoxicating liquor or any drug in violation of subsection (1)(b) or
22 (c) of this section.

23 (5) A violation of this section is a gross misdemeanor.

24 **Sec. 3.** RCW 88.12.025 and 1993 c 244 s 8 are each amended to read
25 as follows:

26 (1) It shall be unlawful for any person to operate a vessel in a
27 reckless manner.

28 (2) It shall be a violation for a person to operate a vessel while
29 under the influence of intoxicating liquor or any drug. A person is
30 considered to be under the influence of intoxicating liquor or any drug
31 if:

32 (a) The person has ((0.10)) 0.08 grams or more of alcohol per two
33 hundred ten liters of breath, as shown by analysis of the person's
34 breath made under RCW 46.61.506; or

35 (b) The person has ((0.10)) 0.08 percent or more by weight of
36 alcohol in the person's blood, as shown by analysis of the person's
37 blood made under RCW 46.61.506; or

1 (c) The person is under the influence of or affected by
2 intoxicating liquor or any drug; or

3 (d) The person is under the combined influence of or affected by
4 intoxicating liquor and any drug.

5 The fact that any person charged with a violation of this section
6 is or has been entitled to use such drug under the laws of this state
7 shall not constitute a defense against any charge of violating this
8 section. A person cited under this subsection may upon request be
9 given a breath test for breath alcohol or may request to have a blood
10 sample taken for blood alcohol analysis. An arresting officer shall
11 administer field sobriety tests when circumstances permit.

12 (3) A violation of this section is a misdemeanor, punishable as
13 provided under RCW 9.92.030. In addition, the court may order the
14 defendant to pay restitution for any damages or injuries resulting from
15 the offense.

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