

CERTIFICATION OF ENROLLMENT

**HOUSE BILL 1165**

Chapter 219, Laws of 1998

55th Legislature  
1998 Regular Session

HOMICIDE AND ASSAULT BY WATERCRAFT

EFFECTIVE DATE: 6/11/98

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

CLYDE BALLARD  
**Speaker of the  
House of Representatives**

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

BRAD OWEN  
**President of the Senate**

Approved March 30, 1998

GARY LOCKE  
**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.

TIMOTHY A. MARTIN  
**Chief Clerk**

FILED

March 30, 1998 - 2:58 p.m.

**Secretary of State  
State of Washington**

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HOUSE BILL 1165

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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.

Passed the House March 9, 1998.

Passed the Senate February 27, 1998.

Approved by the Governor March 30, 1998.

Filed in Office of Secretary of State March 30, 1998.