

2 **HB 1757** - S AMD  
3 By Senators Nelson and Talmadge

4 Adopted 4/10/91 - Voice Vote

5 On page 15, after line 4, insert the following:

6 "Sec. 7. RCW 46.61.502 and 1987 c 373 s 2 are each amended to read  
7 as follows:

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

11 ~~((1))~~ (a) The person has ~~((0.10 grams or more of alcohol per two~~  
12 ~~hundred ten liters of breath))~~ alcohol in his or her breath at or above  
13 the alcohol concentration standard defined in subsection (2) of this  
14 section, as shown by analysis of the person's breath made under RCW  
15 46.61.506; or

16 ~~((2))~~ (b) The person has ~~((0.10 percent or more by weight of~~  
17 ~~alcohol in the person's blood))~~ alcohol in his or her blood at or above  
18 the alcohol concentration standard defined in subsection (2) of this  
19 section as shown by analysis of the person's blood made under RCW  
20 46.61.506; or

21 ~~((3))~~ (c) The person is under the influence of or affected by  
22 intoxicating liquor or any drug; or

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

25 (2) "Alcohol concentration standard" means:

26 (a) For a person under the age of twenty-one years:

27 (i) Any amount more than 0.04 grams of alcohol per two hundred ten  
28 liters of breath; or

1        (ii) Any more than 0.04 percent by weight of alcohol in the blood;

2        and

3        (b) For a person age twenty-one years or older:

4        (i) 0.08 grams of alcohol per two hundred ten liters of breath; or

5        (ii) 0.08 percent by weight of alcohol in the blood.

6        (3) The fact that any person charged with a violation of this  
7 section is or has been entitled to use (~~such~~) a drug under the laws  
8 of this state shall not constitute a defense against any charge of  
9 violating this section."

10        "**Sec. 8.** RCW 46.61.504 and 1987 c 373 s 3 are each amended to read  
11 as follows:

12        (1) A person is guilty of being in actual physical control of a  
13 motor vehicle while under the influence of intoxicating liquor or any  
14 drug if the person has actual physical control of a vehicle within this  
15 state while:

16        ~~((1))~~ (a) The person has (~~0.10 grams or more of alcohol per two~~  
17 ~~hundred ten liters of breath)) alcohol in his or her breath at or above~~  
18 the alcohol concentration standard defined in RCW 46.61.502, as shown  
19 by analysis of the person's breath made under RCW 46.61.506; or

20        ~~((2))~~ (b) The person has (~~0.10 percent or more by weight of~~  
21 ~~alcohol in the person's blood)) alcohol in his or her blood at or above~~  
22 the alcohol concentration standard defined in RCW 46.61.502, as shown  
23 by analysis of the person's blood made under RCW 46.61.506; or

24        ~~((3))~~ (c) The person is under the influence of or affected by  
25 intoxicating liquor or any drug; or

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

28        (2) The fact that any person charged with a violation of this  
29 section is or has been entitled to use such drug under the laws of this

1 state shall not constitute a defense against any charge of violating  
2 this section. No person may be convicted under this section if, prior  
3 to being pursued by a law enforcement officer, the person has moved the  
4 vehicle safely off the roadway."

5 "Sec. 9. RCW 46.61.506 and 1987 c 373 s 4 are each amended to read  
6 as follows:

7 (1) Upon the trial of any civil or criminal action or proceeding  
8 arising out of acts alleged to have been committed by any person while  
9 driving or in actual physical control of a vehicle while under the  
10 influence of intoxicating liquor or any drug, if the amount of alcohol  
11 in the person's blood or breath at the time alleged as shown by  
12 analysis of his blood or breath is less than (~~(0.10 percent by weight~~  
13 ~~of alcohol in his blood or 0.10 grams of alcohol per two hundred ten~~  
14 ~~liters of the person's breath)) the alcohol concentration standard  
15 defined in RCW 46.61.502, it is evidence that may be considered with  
16 other competent evidence in determining whether the person was under  
17 the influence of intoxicating liquor or any drug.~~

18 (2) The breath analysis shall be based upon grams of alcohol per  
19 two hundred ten liters of breath. The foregoing provisions of this  
20 section shall not be construed as limiting the introduction of any  
21 other competent evidence bearing upon the question whether the person  
22 was under the influence of intoxicating liquor or any drug.

23 (3) Analysis of the person's blood or breath to be considered valid  
24 under the provisions of this section or RCW 46.61.502 or 46.61.504  
25 shall have been performed according to methods approved by the state  
26 toxicologist and by an individual possessing a valid permit issued by  
27 the state toxicologist for this purpose. The state toxicologist is  
28 directed to approve satisfactory techniques or methods, to supervise  
29 the examination of individuals to ascertain their qualifications and

1 competence to conduct such analyses, and to issue permits which shall  
2 be subject to termination or revocation at the discretion of the state  
3 toxicologist.

4 (4) When a blood test is administered under the provisions of RCW  
5 46.20.308, the withdrawal of blood for the purpose of determining its  
6 alcoholic content may be performed only by a physician, a registered  
7 nurse, or a qualified technician. This limitation shall not apply to  
8 the taking of breath specimens.

9 (5) The person tested may have a physician, or a qualified  
10 technician, chemist, registered nurse, or other qualified person of his  
11 own choosing administer one or more tests in addition to any  
12 administered at the direction of a law enforcement officer. The  
13 failure or inability to obtain an additional test by a person shall not  
14 preclude the admission of evidence relating to the test or tests taken  
15 at the direction of a law enforcement officer.

16 (6) Upon the request of the person who shall submit to a test or  
17 tests at the request of a law enforcement officer, full information  
18 concerning the test or tests shall be made available to him or his  
19 attorney."

20 "Sec. 10. RCW 9.41.098 and 1989 c 222 s 8 are each amended to read  
21 as follows:

22 (1) The superior courts and the courts of limited jurisdiction of  
23 the state may order forfeiture of a firearm which is proven to be:

24 (a) Found concealed on a person not authorized by RCW 9.41.060 or  
25 9.41.070 to carry a concealed pistol: PROVIDED, That it is an absolute  
26 defense to forfeiture if the person possessed a valid Washington  
27 concealed pistol license within the preceding two years and has not  
28 become ineligible for a concealed pistol license in the interim. Before

1 the firearm may be returned, the person must pay the past due renewal  
2 fee and the current renewal fee;

3 (b) Commercially sold to any person without an application as  
4 required by RCW 9.41.090;

5 (c) Found in the possession or under the control of a person at the  
6 time the person committed or was arrested for committing a crime of  
7 violence or a crime in which a firearm was used or displayed or a  
8 felony violation of the uniform controlled substances act, chapter  
9 69.50 RCW;

10 (d) Found concealed on a person who is in any place in which a  
11 concealed pistol license is required, and who is under the influence of  
12 any drug or under the influence of intoxicating liquor, having ~~((0.10~~  
13 ~~grams or more of alcohol per two hundred ten liters of breath or 0.10~~  
14 ~~percent or more by weight of alcohol in the person's blood)) alcohol in  
15 his or her breath or blood at or above the alcohol concentration  
16 standard defined in RCW 46.61.502, as shown by analysis of the person's  
17 breath, blood, or other bodily substance;~~

18 (e) Found in the possession of a person prohibited from possessing  
19 the firearm under RCW 9.41.040;

20 (f) Found in the possession of a person free on bail or personal  
21 recognizance pending trial, appeal, or sentencing for a crime of  
22 violence or a crime in which a firearm was used or displayed, except  
23 that violations of Title 77 RCW shall not result in forfeiture under  
24 this section;

25 (g) Found in the possession of a person found to have been mentally  
26 incompetent while in possession of a firearm when apprehended or who is  
27 thereafter committed pursuant to chapter 10.77 or 71.05 RCW;

28 (h) Known to have been used or displayed by a person in the  
29 violation of a proper written order of a court of general jurisdiction;

30 or

1 (i) Known to have been used in the commission of a crime of  
2 violence or a crime in which a firearm was used or displayed or a  
3 felony violation of the uniformed controlled substances act, chapter  
4 69.50 RCW.

5 (2) Upon order of forfeiture, the court in its discretion shall  
6 order destruction of any firearm that is illegal for any person to  
7 possess. All firearms legal for citizen possession that are judicially  
8 forfeited or forfeited due to failure to make a claim under RCW  
9 63.32.010, 63.40.010, or 63.35.020 shall be submitted for auction to  
10 commercial sellers once a year if the submitting agency has accumulated  
11 at least ten firearms authorized for sale. Law enforcement agencies  
12 may conduct joint auctions for the purpose of maximizing efficiency.  
13 A maximum of ten percent of such firearms may be retained for use by  
14 local law enforcement agencies and the Washington state patrol. Before  
15 submission for auction, a court may temporarily retain forfeited  
16 firearms if needed for evidence. The proceeds from any sale shall be  
17 divided as follows: The local jurisdiction and the Washington state  
18 patrol shall retain its costs, including actual costs of storage and  
19 sale, and shall forward the remainder to the state department of  
20 wildlife for use in its firearms training program pursuant to RCW  
21 77.32.155.

22 If a firearm is delivered to a law enforcement agency and the  
23 agency no longer requires use of the firearm, the agency shall dispose  
24 of the firearm by auction as provided by this subsection. The public  
25 auctioning agency shall, as a minimum, maintain a record of all  
26 forfeited firearms by manufacturer, model, caliber, serial number, date  
27 and circumstances of forfeiture, and final disposition. The records  
28 shall be open to public inspection and copying.

29 (3) The court shall order the firearm returned to the owner upon a  
30 showing that there is no probable cause to believe a violation of

1 subsection (1) of this section existed or the firearm was stolen from  
2 the owner or the owner neither had knowledge of nor consented to the  
3 act or omission involving the firearm which resulted in its forfeiture.

4 (4) A law enforcement officer of the state or of any county or  
5 municipality may confiscate a firearm found to be in the possession of  
6 a person under circumstances specified in subsection (1) of this  
7 section. After confiscation, the firearm shall not be surrendered  
8 except: (a) To the prosecuting attorney for use in subsequent legal  
9 proceedings; (b) for disposition according to an order of a court  
10 having jurisdiction as provided in subsection (1) of this section; or  
11 (c) to the owner if the proceedings are dismissed or as directed in  
12 subsection (3) of this section."

13 "Sec. 11. RCW 88.02.095 and 1990 c 231 s 3 & 1990 c 31 s 1 are  
14 each reenacted and amended to read as follows:

15 (1) It shall be unlawful for any person to operate a vessel in a  
16 negligent manner. For the purpose of this section, to "operate in a  
17 negligent manner" shall be construed to mean the operation of a vessel  
18 in such manner as to endanger or be likely to endanger any persons or  
19 property or to operate at a rate of speed greater than will permit the  
20 operator in the exercise of reasonable care to bring the vessel to a  
21 safe stop.

22 (2) A person is guilty of operating a vessel while under the  
23 influence of intoxicating liquor or any drug if the person operates a  
24 vessel within this state while:

25 (a) The person has (~~0.10 grams or more of alcohol per two hundred~~  
26 ~~ten liters of breath~~) alcohol in his or her breath at or above the  
27 alcohol concentration standard defined in RCW 46.61.502, as shown by  
28 analysis of the person's breath made under RCW 46.61.506; or

1 (b) The person has (~~0.10 percent or more by weight of alcohol in~~  
2 ~~the person's blood~~) alcohol in his or her blood at or above the  
3 alcohol concentration standard defined in RCW 46.61.502, as shown by  
4 analysis of the person's blood made under RCW 46.61.506; or

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

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

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

16 (3) For the purposes of this section, "vessel" means any watercraft  
17 used or capable of being used as a means of transportation on the  
18 water, other than a seaplane.

19 (4) For the purpose of this section, "vessel operator" means a  
20 person who is in actual physical control of a vessel.

21 (5) A violation of this section is a misdemeanor, punishable by up  
22 to ninety days in jail and by a fine of not more than one thousand  
23 dollars. In addition, the court may order the defendant to pay  
24 restitution for any damages or injuries resulting from the offense."

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27 Adopted 4/10/91 - Voice Vote

28 On page 1, line 2 of the title, after "drug;" strike "and"

1        On page 1, line 3 of the title, after "46.61.990," strike "and" and  
2 after "70.96A.120" insert ", 46.61.502, 46.61.504, 46.61.506, and  
3 9.41.098; and reenacting and amending RCW 88.02.095"