
SENATE BILL 5069

State of Washington

52nd Legislature

1991 Regular Session

By Senators Nelson, Rasmussen, Talmadge, Oke, Bailey, Craswell, Thorsness, McCaslin, Johnson, Roach, Metcalf, Vognild and Conner.

Read first time January 17, 1991. Referred to Committee on Law & Justice.

1 AN ACT Relating to changing the blood and breath alcohol content
2 standards for intoxication for those persons under the age of twenty-
3 one; amending RCW 46.61.502, 46.61.504, 46.61.506, and 9.41.098; and
4 reenacting and amending RCW 88.02.095.

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

6 **Sec. 1.** 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

1 section, as shown by analysis of the person's breath made under RCW
2 46.61.506; or

3 ~~((2))~~ (b) The person has ~~((0.10 percent or more by weight of~~
4 ~~alcohol in the person's blood))~~ alcohol in his or her blood at or above
5 the alcohol concentration standard defined in subsection (2) of this
6 section as shown by analysis of the person's blood made under RCW
7 46.61.506; or

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

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

12 (2) "Alcohol concentration standard" means:

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

14 (i) Any amount more than 0.00 grams of alcohol per two hundred ten
15 liters of breath; or

16 (ii) Any more than 0.00 percent by weight of alcohol in the blood;
17 and

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

19 (i) 0.10 grams of alcohol per two hundred ten liters of breath; or

20 (ii) 0.10 percent by weight of alcohol in the blood.

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

25 **Sec. 2.** RCW 46.61.504 and 1987 c 373 s 3 are each amended to read
26 as follows:

27 (1) A person is guilty of being in actual physical control of a
28 motor vehicle while under the influence of intoxicating liquor or any

1 drug if the person has actual physical control of a vehicle within this
2 state while:

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

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

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

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

15 (2) The fact that any person charged with a violation of this
16 section is or has been entitled to use such drug under the laws of this
17 state shall not constitute a defense against any charge of violating
18 this section. No person may be convicted under this section if, prior
19 to being pursued by a law enforcement officer, the person has moved the
20 vehicle safely off the roadway.

21 **Sec. 3.** RCW 46.61.506 and 1987 c 373 s 4 are each amended to read
22 as follows:

23 (1) Upon the trial of any civil or criminal action or proceeding
24 arising out of acts alleged to have been committed by any person while
25 driving or in actual physical control of a vehicle while under the
26 influence of intoxicating liquor or any drug, if the amount of alcohol
27 in the person's blood or breath at the time alleged as shown by
28 analysis of his blood or breath is less than ~~((0.10 percent by weight~~
29 ~~of alcohol in his blood or 0.10 grams of alcohol per two hundred ten~~

1 ~~liters of the person's breath))~~ the alcohol concentration standard
2 defined in RCW 46.61.502, it is evidence that may be considered with
3 other competent evidence in determining whether the person was under
4 the influence of intoxicating liquor or any drug.

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

10 (3) Analysis of the person's blood or breath to be considered valid
11 under the provisions of this section or RCW 46.61.502 or 46.61.504
12 shall have been performed according to methods approved by the state
13 toxicologist and by an individual possessing a valid permit issued by
14 the state toxicologist for this purpose. The state toxicologist is
15 directed to approve satisfactory techniques or methods, to supervise
16 the examination of individuals to ascertain their qualifications and
17 competence to conduct such analyses, and to issue permits which shall
18 be subject to termination or revocation at the discretion of the state
19 toxicologist.

20 (4) When a blood test is administered under the provisions of RCW
21 46.20.308, the withdrawal of blood for the purpose of determining its
22 alcoholic content may be performed only by a physician, a registered
23 nurse, or a qualified technician. This limitation shall not apply to
24 the taking of breath specimens.

25 (5) The person tested may have a physician, or a qualified
26 technician, chemist, registered nurse, or other qualified person of his
27 own choosing administer one or more tests in addition to any
28 administered at the direction of a law enforcement officer. The
29 failure or inability to obtain an additional test by a person shall not

1 preclude the admission of evidence relating to the test or tests taken
2 at the direction of a law enforcement officer.

3 (6) Upon the request of the person who shall submit to a test or
4 tests at the request of a law enforcement officer, full information
5 concerning the test or tests shall be made available to him or his
6 attorney.

7 **Sec. 4.** RCW 9.41.098 and 1989 c 222 s 8 are each amended to read
8 as follows:

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

11 (a) Found concealed on a person not authorized by RCW 9.41.060 or
12 9.41.070 to carry a concealed pistol: PROVIDED, That it is an absolute
13 defense to forfeiture if the person possessed a valid Washington
14 concealed pistol license within the preceding two years and has not
15 become ineligible for a concealed pistol license in the interim. Before
16 the firearm may be returned, the person must pay the past due renewal
17 fee and the current renewal fee;

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

20 (c) Found in the possession or under the control of a person at the
21 time the person committed or was arrested for committing a crime of
22 violence or a crime in which a firearm was used or displayed or a
23 felony violation of the uniform controlled substances act, chapter
24 69.50 RCW;

25 (d) Found concealed on a person who is in any place in which a
26 concealed pistol license is required, and who is under the influence of
27 any drug or under the influence of intoxicating liquor, having ~~((0.10~~
28 ~~grams or more of alcohol per two hundred ten liters of breath or 0.10~~
29 ~~percent or more by weight of alcohol in the person's blood)) alcohol in~~

1 his or her breath or blood at or above the alcohol concentration
2 standard defined in RCW 46.61.502, as shown by analysis of the person's
3 breath, blood, or other bodily substance;

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

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

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

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

17 (i) Known to have been used in the commission of a crime of
18 violence or a crime in which a firearm was used or displayed or a
19 felony violation of the uniformed controlled substances act, chapter
20 69.50 RCW.

21 (2) Upon order of forfeiture, the court in its discretion shall
22 order destruction of any firearm that is illegal for any person to
23 possess. All firearms legal for citizen possession that are judicially
24 forfeited or forfeited due to failure to make a claim under RCW
25 63.32.010, 63.40.010, or 63.35.020 shall be submitted for auction to
26 commercial sellers once a year if the submitting agency has accumulated
27 at least ten firearms authorized for sale. Law enforcement agencies
28 may conduct joint auctions for the purpose of maximizing efficiency.
29 A maximum of ten percent of such firearms may be retained for use by
30 local law enforcement agencies and the Washington state patrol. Before

1 submission for auction, a court may temporarily retain forfeited
2 firearms if needed for evidence. The proceeds from any sale shall be
3 divided as follows: The local jurisdiction and the Washington state
4 patrol shall retain its costs, including actual costs of storage and
5 sale, and shall forward the remainder to the state department of
6 wildlife for use in its firearms training program pursuant to RCW
7 77.32.155.

8 If a firearm is delivered to a law enforcement agency and the
9 agency no longer requires use of the firearm, the agency shall dispose
10 of the firearm by auction as provided by this subsection. The public
11 auctioning agency shall, as a minimum, maintain a record of all
12 forfeited firearms by manufacturer, model, caliber, serial number, date
13 and circumstances of forfeiture, and final disposition. The records
14 shall be open to public inspection and copying.

15 (3) The court shall order the firearm returned to the owner upon a
16 showing that there is no probable cause to believe a violation of
17 subsection (1) of this section existed or the firearm was stolen from
18 the owner or the owner neither had knowledge of nor consented to the
19 act or omission involving the firearm which resulted in its forfeiture.

20 (4) A law enforcement officer of the state or of any county or
21 municipality may confiscate a firearm found to be in the possession of
22 a person under circumstances specified in subsection (1) of this
23 section. After confiscation, the firearm shall not be surrendered
24 except: (a) To the prosecuting attorney for use in subsequent legal
25 proceedings; (b) for disposition according to an order of a court
26 having jurisdiction as provided in subsection (1) of this section; or
27 (c) to the owner if the proceedings are dismissed or as directed in
28 subsection (3) of this section.

1 **Sec. 5.** RCW 88.02.095 and 1990 c 231 s 3 & 1990 c 31 s 1 are each
2 reenacted and amended to read as follows:

3 (1) It shall be unlawful for any person to operate a vessel in a
4 negligent manner. For the purpose of this section, to "operate in a
5 negligent manner" shall be construed to mean the operation of a vessel
6 in such manner as to endanger or be likely to endanger any persons or
7 property or to operate at a rate of speed greater than will permit the
8 operator in the exercise of reasonable care to bring the vessel to a
9 safe stop.

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

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

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

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

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

25 The fact that any person charged with a violation of this section
26 is or has been entitled to use such drug under the laws of this state
27 shall not constitute a defense against any charge of violating this
28 section. A person cited under this subsection may upon request be
29 given a breath test for breath alcohol or may request to have a blood

1 sample taken for blood alcohol analysis. An arresting officer shall
2 administer field sobriety tests when circumstances permit.

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

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

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