

CERTIFICATION OF ENROLLMENT

ENGROSSED SENATE BILL 6257

Chapter 213, Laws of 1998

55th Legislature
1998 Regular Session

LOWERING STATUTORY LEVELS FOR LEGAL ALCOHOL INTOXICATION

EFFECTIVE DATE: 1/1/99

Passed by the Senate March 7, 1998
YEAS 48 NAYS 0

BRAD OWEN

President of the Senate

Passed by the House March 5, 1998
YEAS 95 NAYS 2

CLYDE BALLARD

**Speaker of the
House of Representatives**

Approved March 30, 1998

GARY LOCKE

Governor of the State of Washington

CERTIFICATE

I, Mike O Connell, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SENATE BILL 6257** as passed by the Senate and the House of Representatives on the dates hereon set forth.

MIKE O'CONNELL

Secretary

FILED

March 30, 1998 - 2:50 p.m.

**Secretary of State
State of Washington**

ENGROSSED SENATE BILL 6257

Passed Legislature - 1998 Regular Session

AS AMENDED BY THE HOUSE

State of Washington 55th Legislature 1998 Regular Session

By Senators Strannigan, Roach, Goings, Anderson, Long, Oke, Swecker,
Benton, Wood, Stevens, Rasmussen and Patterson

Read first time 01/14/98. Referred to Committee on Law & Justice.

1 AN ACT Relating to blood and breath alcohol standards for
2 intoxication; amending RCW 46.20.308, 46.20.3101, 46.61.502, 46.61.503,
3 46.61.504, 46.61.506, and 88.12.025; creating a new section;
4 prescribing penalties; and providing an effective date.

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

6 **Sec. 1.** RCW 46.20.308 and 1995 c 332 s 1 are each amended to read
7 as follows:

8 (1) Any person who operates a motor vehicle within this state is
9 deemed to have given consent, subject to the provisions of RCW
10 46.61.506, to a test or tests of his or her breath or blood for the
11 purpose of determining the alcohol concentration or presence of any
12 drug in his or her breath or blood if arrested for any offense where,
13 at the time of the arrest, the arresting officer has reasonable grounds
14 to believe the person had been driving or was in actual physical
15 control of a motor vehicle while under the influence of intoxicating
16 liquor or any drug or was in violation of RCW 46.61.503.

17 (2) The test or tests of breath shall be administered at the
18 direction of a law enforcement officer having reasonable grounds to
19 believe the person to have been driving or in actual physical control

1 of a motor vehicle within this state while under the influence of
2 intoxicating liquor or the person to have been driving or in actual
3 physical control of a motor vehicle while having alcohol in a
4 concentration (~~(of 0.02 or more)~~) in violation of RCW 46.61.503 in his
5 or her system and being under the age of twenty-one. However, in those
6 instances where the person is incapable due to physical injury,
7 physical incapacity, or other physical limitation, of providing a
8 breath sample or where the person is being treated in a hospital,
9 clinic, doctor's office, emergency medical vehicle, ambulance, or other
10 similar facility in which a breath testing instrument is not present or
11 where the officer has reasonable grounds to believe that the person is
12 under the influence of a drug, a blood test shall be administered by a
13 qualified person as provided in RCW 46.61.506(4). The officer shall
14 inform the person of his or her right to refuse the breath or blood
15 test, and of his or her right to have additional tests administered by
16 any qualified person of his or her choosing as provided in RCW
17 46.61.506. The officer shall warn the driver that:

18 (a) His or her license, permit, or privilege to drive will be
19 revoked or denied if he or she refuses to submit to the test;

20 (b) His or her license, permit, or privilege to drive will be
21 suspended, revoked, denied, or placed in probationary status if the
22 test is administered and the test indicates the alcohol concentration
23 of the person's breath or blood is (~~(0.10)~~) 0.08 or more, in the case
24 of a person age twenty-one or over, or (~~(0.02 or more)~~) in violation of
25 RCW 46.61.502, 46.61.503, or 46.61.504 in the case of a person under
26 age twenty-one; and

27 (c) His or her refusal to take the test may be used in a criminal
28 trial.

29 (3) Except as provided in this section, the test administered shall
30 be of the breath only. If an individual is unconscious or is under
31 arrest for the crime of vehicular homicide as provided in RCW 46.61.520
32 or vehicular assault as provided in RCW 46.61.522, or if an individual
33 is under arrest for the crime of driving while under the influence of
34 intoxicating liquor or drugs as provided in RCW 46.61.502, which arrest
35 results from an accident in which there has been serious bodily injury
36 to another person, a breath or blood test may be administered without
37 the consent of the individual so arrested.

38 (4) Any person who is dead, unconscious, or who is otherwise in a
39 condition rendering him or her incapable of refusal, shall be deemed

1 not to have withdrawn the consent provided by subsection (1) of this
2 section and the test or tests may be administered, subject to the
3 provisions of RCW 46.61.506, and the person shall be deemed to have
4 received the warnings required under subsection (2) of this section.

5 (5) If, following his or her arrest and receipt of warnings under
6 subsection (2) of this section, the person arrested refuses upon the
7 request of a law enforcement officer to submit to a test or tests of
8 his or her breath or blood, no test shall be given except as authorized
9 under subsection (3) or (4) of this section.

10 (6) If, after arrest and after the other applicable conditions and
11 requirements of this section have been satisfied, a test or tests of
12 the person's blood or breath is administered and the test results
13 indicate that the alcohol concentration of the person's breath or blood
14 is ~~((0.10))~~ 0.08 or more if the person is age twenty-one or over, or is
15 ~~((0.02 or more))~~ in violation of RCW 46.61.502, 46.61.503, or 46.61.504
16 if the person is under the age of twenty-one, or the person refuses to
17 submit to a test, the arresting officer or other law enforcement
18 officer at whose direction any test has been given, or the department,
19 where applicable, if the arrest results in a test of the person's
20 blood, shall:

21 (a) Serve notice in writing on the person on behalf of the
22 department of its intention to suspend, revoke, deny, or place in
23 probationary status the person's license, permit, or privilege to drive
24 as required by subsection (7) of this section;

25 (b) Serve notice in writing on the person on behalf of the
26 department of his or her right to a hearing, specifying the steps he or
27 she must take to obtain a hearing as provided by subsection (8) of this
28 section;

29 (c) Mark the person's Washington state driver's license or permit
30 to drive, if any, in a manner authorized by the department;

31 (d) Serve notice in writing that the marked license or permit, if
32 any, is a temporary license that is valid for sixty days from the date
33 of arrest or from the date notice has been given in the event notice is
34 given by the department following a blood test, or until the
35 suspension, revocation, or denial of the person's license, permit, or
36 privilege to drive is sustained at a hearing pursuant to subsection (8)
37 of this section, whichever occurs first. No temporary license is valid
38 to any greater degree than the license or permit that it replaces; and

1 (e) Immediately notify the department of the arrest and transmit to
2 the department within seventy-two hours, except as delayed as the
3 result of a blood test, a sworn report or report under a declaration
4 authorized by RCW A.72.085 that states:

5 (i) That the officer had reasonable grounds to believe the arrested
6 person had been driving or was in actual physical control of a motor
7 vehicle within this state while under the influence of intoxicating
8 liquor or drugs, or both, or was under the age of twenty-one years and
9 had been driving or was in actual physical control of a motor vehicle
10 while having an alcohol concentration (~~(of 0.02 or more)~~) in violation
11 of RCW 46.61.503;

12 (ii) That after receipt of the warnings required by subsection (2)
13 of this section the person refused to submit to a test of his or her
14 blood or breath, or a test was administered and the results indicated
15 that the alcohol concentration of the person's breath or blood was
16 (~~(0.10)~~) 0.08 or more if the person is age twenty-one or over, or was
17 (~~(0.02 or more)~~) in violation of RCW 46.61.502, 46.61.503, or 46.61.504
18 if the person is under the age of twenty-one; and

19 (iii) Any other information that the director may require by rule.

20 (7) The department of licensing, upon the receipt of a sworn report
21 or report under a declaration authorized by RCW A.72.085 under
22 subsection (6)(e) of this section, shall suspend, revoke, deny, or
23 place in probationary status the person's license, permit, or privilege
24 to drive or any nonresident operating privilege, as provided in RCW
25 46.20.3101, such suspension, revocation, denial, or placement in
26 probationary status to be effective beginning sixty days from the date
27 of arrest or from the date notice has been given in the event notice is
28 given by the department following a blood test, or when sustained at a
29 hearing pursuant to subsection (8) of this section, whichever occurs
30 first.

31 (8) A person receiving notification under subsection (6)(b) of this
32 section may, within thirty days after the notice has been given,
33 request in writing a formal hearing before the department. The person
34 shall pay a fee of one hundred dollars as part of the request. If the
35 request is mailed, it must be postmarked within thirty days after
36 receipt of the notification. Upon timely receipt of such a request for
37 a formal hearing, including receipt of the required one hundred dollar
38 fee, the department shall afford the person an opportunity for a
39 hearing. Except as otherwise provided in this section, the hearing is

1 subject to and shall be scheduled and conducted in accordance with RCW
2 46.20.329 and 46.20.332. The hearing shall be conducted in the county
3 of the arrest, except that all or part of the hearing may, at the
4 discretion of the department, be conducted by telephone or other
5 electronic means. The hearing shall be held within sixty days
6 following the arrest or following the date notice has been given in the
7 event notice is given by the department following a blood test, unless
8 otherwise agreed to by the department and the person, in which case the
9 action by the department shall be stayed, and any valid temporary
10 license marked under subsection (6)(c) of this section extended, if the
11 person is otherwise eligible for licensing. For the purposes of this
12 section, the scope of the hearing shall cover the issues of whether a
13 law enforcement officer had reasonable grounds to believe the person
14 had been driving or was in actual physical control of a motor vehicle
15 within this state while under the influence of intoxicating liquor or
16 any drug or had been driving or was in actual physical control of a
17 motor vehicle within this state while having alcohol in his or her
18 system in a concentration (~~(of 0.02 or more)~~) in violation of RCW
19 46.61.503 and was under the age of twenty-one, whether the person was
20 placed under arrest, and (a) whether the person refused to submit to
21 the test or tests upon request of the officer after having been
22 informed that such refusal would result in the revocation of the
23 person's license, permit, or privilege to drive, or (b) if a test or
24 tests were administered, whether the applicable requirements of this
25 section were satisfied before the administration of the test or tests,
26 whether the person submitted to the test or tests, or whether a test
27 was administered without express consent as permitted under this
28 section, and whether the test or tests indicated that the alcohol
29 concentration of the person's breath or blood was (~~(0.10)~~) 0.08 or more
30 if the person was age twenty-one or over at the time of the arrest, or
31 was (~~(0.02 or more)~~) in violation of RCW 46.61.502, 46.61.503, or
32 46.61.504 if the person was under the age of twenty-one at the time of
33 the arrest. The sworn report or report under a declaration authorized
34 by RCW A.72.085 submitted by a law enforcement officer is prima facie
35 evidence that the officer had reasonable grounds to believe the person
36 had been driving or was in actual physical control of a motor vehicle
37 within this state while under the influence of intoxicating liquor or
38 drugs, or both, or the person had been driving or was in actual
39 physical control of a motor vehicle within this state while having

1 alcohol in his or her system in a concentration (~~of 0.02 or more~~) in
2 violation of RCW 46.61.503 and was under the age of twenty-one and that
3 the officer complied with the requirements of this section.

4 A hearing officer shall conduct the hearing, may issue subpoenas
5 for the attendance of witnesses and the production of documents, and
6 shall administer oaths to witnesses. The hearing officer shall not
7 issue a subpoena for the attendance of a witness at the request of the
8 person unless the request is accompanied by the fee required by RCW
9 5.56.010 for a witness in district court. The sworn report or report
10 under a declaration authorized by RCW 9A.72.085 of the law enforcement
11 officer and any other evidence accompanying the report shall be
12 admissible without further evidentiary foundation and the
13 certifications authorized by the criminal rules for courts of limited
14 jurisdiction shall be admissible without further evidentiary
15 foundation. The person may be represented by counsel, may question
16 witnesses, may present evidence, and may testify. The department shall
17 order that the suspension, revocation, denial, or placement in
18 probationary status either be rescinded or sustained.

19 (9) If the suspension, revocation, denial, or placement in
20 probationary status is sustained after such a hearing, the person whose
21 license, privilege, or permit is suspended, revoked, denied, or placed
22 in probationary status has the right to file a petition in the superior
23 court of the county of arrest to review the final order of revocation
24 by the department in the same manner as an appeal from a decision of a
25 court of limited jurisdiction. The appellant must pay the costs
26 associated with obtaining the record of the hearing before the hearing
27 officer. The filing of the appeal does not stay the effective date of
28 the suspension, revocation, denial, or placement in probationary
29 status. A petition filed under this subsection must include the
30 petitioner's grounds for requesting review. Upon granting petitioner's
31 request for review, the court shall review the department's final order
32 of suspension, revocation, denial, or placement in probationary status
33 as expeditiously as possible. If judicial relief is sought for a stay
34 or other temporary remedy from the department's action, the court shall
35 not grant such relief unless the court finds that the appellant is
36 likely to prevail in the appeal and that without a stay the appellant
37 will suffer irreparable injury. If the court stays the suspension,
38 revocation, denial, or placement in probationary status it may impose
39 conditions on such stay.

1 (10) If a person whose driver's license, permit, or privilege to
2 drive has been or will be suspended, revoked, denied, or placed in
3 probationary status under subsection (7) of this section, other than as
4 a result of a breath test refusal, and who has not committed an offense
5 within the last five years for which he or she was granted a deferred
6 prosecution under chapter 10.05 RCW, petitions a court for a deferred
7 prosecution on criminal charges arising out of the arrest for which
8 action has been or will be taken under subsection (7) of this section,
9 the court may direct the department to stay any actual or proposed
10 suspension, revocation, denial, or placement in probationary status for
11 at least forty-five days but not more than ninety days. If the court
12 stays the suspension, revocation, denial, or placement in probationary
13 status, it may impose conditions on such stay. If the person is
14 otherwise eligible for licensing, the department shall issue a
15 temporary license, or extend any valid temporary license marked under
16 subsection (6) of this section, for the period of the stay. If a
17 deferred prosecution treatment plan is not recommended in the report
18 made under RCW 10.05.050, or if treatment is rejected by the court, or
19 if the person declines to accept an offered treatment plan, or if the
20 person violates any condition imposed by the court, then the court
21 shall immediately direct the department to cancel the stay and any
22 temporary marked license or extension of a temporary license issued
23 under this subsection.

24 A suspension, revocation, or denial imposed under this section,
25 other than as a result of a breath test refusal, shall be stayed if the
26 person is accepted for deferred prosecution as provided in chapter
27 10.05 RCW for the incident upon which the suspension, revocation, or
28 denial is based. If the deferred prosecution is terminated, the stay
29 shall be lifted and the suspension, revocation, or denial reinstated.
30 If the deferred prosecution is completed, the stay shall be lifted and
31 the suspension, revocation, or denial canceled.

32 (11) When it has been finally determined under the procedures of
33 this section that a nonresident's privilege to operate a motor vehicle
34 in this state has been suspended, revoked, or denied, the department
35 shall give information in writing of the action taken to the motor
36 vehicle administrator of the state of the person's residence and of any
37 state in which he or she has a license.

1 **Sec. 2.** RCW 46.20.3101 and 1995 c 332 s 3 are each amended to read
2 as follows:

3 Pursuant to RCW 46.20.308, the department shall suspend, revoke, or
4 deny the arrested person's license, permit, or privilege to drive as
5 follows:

6 (1) In the case of a person who has refused a test or tests:

7 (a) For a first refusal within five years, where there has not been
8 a previous incident within five years that resulted in administrative
9 action under this section, revocation or denial for one year;

10 (b) For a second or subsequent refusal within five years, or for a
11 first refusal where there has been one or more previous incidents
12 within five years that have resulted in administrative action under
13 this section, revocation or denial for two years or until the person
14 reaches age twenty-one, whichever is longer. A revocation imposed
15 under this subsection (1)(b) shall run consecutively to the period of
16 any suspension, revocation, or denial imposed pursuant to a criminal
17 conviction arising out of the same incident.

18 (2) In the case of an incident where a person has submitted to or
19 been administered a test or tests indicating that the alcohol
20 concentration of the person's breath or blood was (~~(0.10)~~) 0.08 or
21 more:

22 (a) For a first incident within five years, where there has not
23 been a previous incident within five years that resulted in
24 administrative action under this section, placement in probationary
25 status as provided in RCW 46.20.355;

26 (b) For a second or subsequent incident within five years,
27 revocation or denial for two years.

28 (3) In the case of an incident where a person under age twenty-one
29 has submitted to or been administered a test or tests indicating that
30 the alcohol concentration of the person's breath or blood was (~~(0.02 or~~
31 ~~more)~~) in violation of RCW 46.61.502, 46.61.503, or 46.61.504:

32 (a) For a first incident within five years, suspension or denial
33 for ninety days;

34 (b) For a second or subsequent incident within five years,
35 revocation or denial for one year or until the person reaches age
36 twenty-one, whichever is longer.

37 **Sec. 3.** RCW 46.61.502 and 1994 c 275 s 2 are each amended to read
38 as follows:

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

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

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

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

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

15 (3) It is an affirmative defense to a violation of subsection
16 (1)(a) of this section which the defendant must prove by a
17 preponderance of the evidence that the defendant consumed a sufficient
18 quantity of alcohol after the time of driving and before the
19 administration of an analysis of the person's breath or blood to cause
20 the defendant's alcohol concentration to be ((0.10)) 0.08 or more
21 within two hours after driving. The court shall not admit evidence of
22 this defense unless the defendant notifies the prosecution prior to the
23 omnibus or pretrial hearing in the case of the defendant's intent to
24 assert the affirmative defense.

25 (4) Analyses of blood or breath samples obtained more than two
26 hours after the alleged driving may be used as evidence that within two
27 hours of the alleged driving, a person had an alcohol concentration of
28 ((0.10)) 0.08 or more in violation of subsection (1)(a) of this
29 section, and in any case in which the analysis shows an alcohol
30 concentration above 0.00 may be used as evidence that a person was
31 under the influence of or affected by intoxicating liquor or any drug
32 in violation of subsection (1)(b) or (c) of this section.

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

34 **Sec. 4.** RCW 46.61.503 and 1995 c 332 s 2 are each amended to read
35 as follows:

36 (1) Notwithstanding any other provision of this title, a person is
37 guilty of driving a motor vehicle after consuming alcohol if the person
38 operates a motor vehicle within this state and the person:

1 (a) Is under the age of twenty-one;

2 (b) Has, within two hours after operating the motor vehicle, an
3 alcohol concentration of (~~0.02 or more~~) at least 0.02 but less than
4 the concentration specified in RCW 46.61.502, as shown by analysis of
5 the person's breath or blood made under RCW 46.61.506.

6 (2) It is an affirmative defense to a violation of subsection (1)
7 of this section which the defendant must prove by a preponderance of
8 the evidence that the defendant consumed a sufficient quantity of
9 alcohol after the time of driving and before the administration of an
10 analysis of the person's breath or blood to cause the defendant's
11 alcohol concentration to be (~~0.02 or more~~) in violation of subsection
12 (1) of this section within two hours after driving. The court shall
13 not admit evidence of this defense unless the defendant notifies the
14 prosecution prior to the earlier of: (a) Seven days prior to trial; or
15 (b) the omnibus or pretrial hearing in the case of the defendant's
16 intent to assert the affirmative defense.

17 (3) Analyses of blood or breath samples obtained more than two
18 hours after the alleged driving may be used as evidence that within two
19 hours of the alleged driving, a person had an alcohol concentration
20 (~~of 0.02 or more~~) in violation of subsection (1) of this section.

21 (4) A violation of this section is a misdemeanor.

22 **Sec. 5.** RCW 46.61.504 and 1994 c 275 s 3 are each amended to read
23 as follows:

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

28 (a) And the person has, within two hours after being in actual
29 physical control of the vehicle, an alcohol concentration of (~~0.10~~)
30 0.08 or higher as shown by analysis of the person's breath or blood
31 made under RCW 46.61.506; or

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

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

36 (2) The fact that a person charged with a violation of this section
37 is or has been entitled to use a drug under the laws of this state does
38 not constitute a defense against any charge of violating this section.

1 No person may be convicted under this section if, prior to being
2 pursued by a law enforcement officer, the person has moved the vehicle
3 safely off the roadway.

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

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

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

25 **Sec. 6.** RCW 46.61.506 and 1995 c 332 s 18 are each amended to read
26 as follows:

27 (1) Upon the trial of any civil or criminal action or proceeding
28 arising out of acts alleged to have been committed by any person while
29 driving or in actual physical control of a vehicle while under the
30 influence of intoxicating liquor or any drug, if the person's alcohol
31 concentration is less than ((0.10)) 0.08, it is evidence that may be
32 considered with other competent evidence in determining whether the
33 person was under the influence of intoxicating liquor or any drug.

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

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

11 (4) When a blood test is administered under the provisions of RCW
12 46.20.308, the withdrawal of blood for the purpose of determining its
13 alcoholic or drug content may be performed only by a physician, a
14 registered nurse, or a qualified technician. This limitation shall not
15 apply to the taking of breath specimens.

16 (5) The person tested may have a physician, or a qualified
17 technician, chemist, registered nurse, or other qualified person of his
18 or her own choosing administer one or more tests in addition to any
19 administered at the direction of a law enforcement officer. The
20 failure or inability to obtain an additional test by a person shall not
21 preclude the admission of evidence relating to the test or tests taken
22 at the direction of a law enforcement officer.

23 (6) Upon the request of the person who shall submit to a test or
24 tests at the request of a law enforcement officer, full information
25 concerning the test or tests shall be made available to him or her or
26 his or her attorney.

27 **Sec. 7.** RCW 88.12.025 and 1993 c 244 s 8 are each amended to read
28 as follows:

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

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

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

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

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

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

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

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

19 NEW SECTION. **Sec. 8.** If specific funding for the purposes of this
20 act, referencing this act by bill or chapter number, is not provided by
21 June 30, 1998, in the omnibus appropriations act, this act is null and
22 void.

23 NEW SECTION. **Sec. 9.** This act takes effect January 1, 1999.
Passed the Senate March 7, 1998.
Passed the House March 5, 1998.
Approved by the Governor March 30, 1998.
Filed in Office of Secretary of State March 30, 1998.