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SENATE BILL 5507

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State of Washington

59th Legislature

2005 Regular Session

By Senator Finkbeiner

Read first time 01/26/2005. Referred to Committee on Judiciary.

1 AN ACT Relating to law enforcement officer accountability when  
2 involved in traffic accidents; amending RCW 10.31.100, 46.52.030,  
3 46.52.070, 46.52.130, and 46.63.030; and declaring an emergency.

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

5 **Sec. 1.** RCW 10.31.100 and 2000 c 119 s 4 are each amended to read  
6 as follows:

7 A police officer having probable cause to believe that a person has  
8 committed or is committing a felony shall have the authority to arrest  
9 the person without a warrant. A police officer may arrest a person  
10 without a warrant for committing a misdemeanor or gross misdemeanor  
11 only when the offense is committed in the presence of the officer,  
12 except as provided in subsections (1) through (10) of this section.

13 (1) Any police officer having probable cause to believe that a  
14 person has committed or is committing a misdemeanor or gross  
15 misdemeanor, involving physical harm or threats of harm to any person  
16 or property or the unlawful taking of property or involving the use or  
17 possession of cannabis, or involving the acquisition, possession, or  
18 consumption of alcohol by a person under the age of twenty-one years

1 under RCW 66.44.270, or involving criminal trespass under RCW 9A.52.070  
2 or 9A.52.080, shall have the authority to arrest the person.

3 (2) A police officer shall arrest and take into custody, pending  
4 release on bail, personal recognizance, or court order, a person  
5 without a warrant when the officer has probable cause to believe that:

6 (a) An order has been issued of which the person has knowledge  
7 under RCW 26.44.063, or chapter 10.99, 26.09, 26.10, 26.26, 26.50, or  
8 74.34 RCW restraining the person and the person has violated the terms  
9 of the order restraining the person from acts or threats of violence,  
10 or restraining the person from going onto the grounds of or entering a  
11 residence, workplace, school, or day care, or prohibiting the person  
12 from knowingly coming within, or knowingly remaining within, a  
13 specified distance of a location or, in the case of an order issued  
14 under RCW 26.44.063, imposing any other restrictions or conditions upon  
15 the person; or

16 (b) A foreign protection order, as defined in RCW 26.52.010, has  
17 been issued of which the person under restraint has knowledge and the  
18 person under restraint has violated a provision of the foreign  
19 protection order prohibiting the person under restraint from contacting  
20 or communicating with another person, or excluding the person under  
21 restraint from a residence, workplace, school, or day care, or  
22 prohibiting the person from knowingly coming within, or knowingly  
23 remaining within, a specified distance of a location, or a violation of  
24 any provision for which the foreign protection order specifically  
25 indicates that a violation will be a crime; or

26 (c) The person is sixteen years or older and within the preceding  
27 four hours has assaulted a family or household member as defined in RCW  
28 10.99.020 and the officer believes: (i) A felonious assault has  
29 occurred; (ii) an assault has occurred which has resulted in bodily  
30 injury to the victim, whether the injury is observable by the  
31 responding officer or not; or (iii) that any physical action has  
32 occurred which was intended to cause another person reasonably to fear  
33 imminent serious bodily injury or death. Bodily injury means physical  
34 pain, illness, or an impairment of physical condition. When the  
35 officer has probable cause to believe that family or household members  
36 have assaulted each other, the officer is not required to arrest both  
37 persons. The officer shall arrest the person whom the officer believes  
38 to be the primary physical aggressor. In making this determination,

1 the officer shall make every reasonable effort to consider: (i) The  
2 intent to protect victims of domestic violence under RCW 10.99.010;  
3 (ii) the comparative extent of injuries inflicted or serious threats  
4 creating fear of physical injury; and (iii) the history of domestic  
5 violence between the persons involved.

6 (3) Any police officer having probable cause to believe that a  
7 person has committed or is committing a violation of any of the  
8 following traffic laws shall have the authority to arrest the person:

9 (a) RCW 46.52.010, relating to duty on striking an unattended car  
10 or other property;

11 (b) RCW 46.52.020, relating to duty in case of injury to or death  
12 of a person or damage to an attended vehicle;

13 (c) RCW 46.61.500 or 46.61.530, relating to reckless driving or  
14 racing of vehicles;

15 (d) RCW 46.61.502 or 46.61.504, relating to persons under the  
16 influence of intoxicating liquor or drugs;

17 (e) RCW 46.20.342, relating to driving a motor vehicle while  
18 operator's license is suspended or revoked;

19 (f) RCW 46.61.5249, relating to operating a motor vehicle in a  
20 negligent manner.

21 (4) A law enforcement officer investigating at the scene of a motor  
22 vehicle accident may arrest the driver of a motor vehicle involved in  
23 the accident if the officer has probable cause to believe that the  
24 driver has committed in connection with the accident a violation of any  
25 traffic law or regulation. Law enforcement officers driving motor  
26 vehicles involved in accidents while on duty are not exempt from this  
27 subsection.

28 (5) Any police officer having probable cause to believe that a  
29 person has committed or is committing a violation of RCW 79A.60.040  
30 shall have the authority to arrest the person.

31 (6) An officer may act upon the request of a law enforcement  
32 officer in whose presence a traffic infraction was committed, to stop,  
33 detain, arrest, or issue a notice of traffic infraction to the driver  
34 who is believed to have committed the infraction. The request by the  
35 witnessing officer shall give an officer the authority to take  
36 appropriate action under the laws of the state of Washington. Law  
37 enforcement officers driving motor vehicles involved in accidents while  
38 on duty are not exempt from this subsection.

1 (7) Any police officer having probable cause to believe that a  
2 person has committed or is committing any act of indecent exposure, as  
3 defined in RCW 9A.88.010, may arrest the person.

4 (8) A police officer may arrest and take into custody, pending  
5 release on bail, personal recognizance, or court order, a person  
6 without a warrant when the officer has probable cause to believe that  
7 an order has been issued of which the person has knowledge under  
8 chapter 10.14 RCW and the person has violated the terms of that order.

9 (9) Any police officer having probable cause to believe that a  
10 person has, within twenty-four hours of the alleged violation,  
11 committed a violation of RCW 9A.50.020 may arrest such person.

12 (10) A police officer having probable cause to believe that a  
13 person illegally possesses or illegally has possessed a firearm or  
14 other dangerous weapon on private or public elementary or secondary  
15 school premises shall have the authority to arrest the person.

16 For purposes of this subsection, the term "firearm" has the meaning  
17 defined in RCW 9.41.010 and the term "dangerous weapon" has the meaning  
18 defined in RCW 9.41.250 and 9.41.280(1) (c) through (e).

19 (11) Except as specifically provided in subsections (2), (3), (4),  
20 and (6) of this section, nothing in this section extends or otherwise  
21 affects the powers of arrest prescribed in Title 46 RCW.

22 (12) No police officer may be held criminally or civilly liable for  
23 making an arrest pursuant to RCW 10.31.100 (2) or (8) if the police  
24 officer acts in good faith and without malice.

25 **Sec. 2.** RCW 46.52.030 and 1997 c 248 s 1 are each amended to read  
26 as follows:

27 (1) Unless a report is to be made by a law enforcement officer  
28 under subsection (3) of this section, the driver of any vehicle  
29 involved in an accident resulting in injury to or death of any person  
30 or damage to the property of any one person to an apparent extent equal  
31 to or greater than the minimum amount established by rule adopted by  
32 the chief of the Washington state patrol in accordance with subsection  
33 (5) of this section, shall, within four days after such accident, make  
34 a written report of such accident to the chief of police of the city or  
35 town if such accident occurred within an incorporated city or town or  
36 the county sheriff or state patrol if such accident occurred outside  
37 incorporated cities and towns. Nothing in this subsection prohibits

1 accident reports from being filed by drivers where damage to property  
2 is less than the minimum amount, where a law enforcement officer on  
3 duty was the driver of the vehicle involved in the accident, or where  
4 a law enforcement officer has submitted a report.

5 (2) The original of the report shall be immediately forwarded by  
6 the authority receiving the report to the chief of the Washington state  
7 patrol at Olympia, Washington. The Washington state patrol shall give  
8 the department of licensing full access to the report.

9 (3) Any law enforcement officer who investigates an accident for  
10 which a report is required under subsection (1) of this section shall  
11 submit an investigator's report as required by RCW 46.52.070.

12 (4) The chief of the Washington state patrol may require any driver  
13 of any vehicle involved in an accident, of which report must be made as  
14 provided in this section, to file supplemental reports whenever the  
15 original report in the chief's opinion is insufficient, and may  
16 likewise require witnesses of any such accident to render reports. For  
17 this purpose, the chief of the Washington state patrol shall prepare  
18 and, upon request, supply to any police department, coroner, sheriff,  
19 and any other suitable agency or individual, sample forms of accident  
20 reports required hereunder, which reports shall be upon a form devised  
21 by the chief of the Washington state patrol and shall call for  
22 sufficiently detailed information to disclose all material facts with  
23 reference to the accident to be reported thereon, including the  
24 location, the circumstances, the conditions then existing, the persons  
25 and vehicles involved, the insurance information required under RCW  
26 46.30.030, personal injury or death, if any, the amounts of property  
27 damage claimed, the total number of vehicles involved, whether the  
28 vehicles were legally parked, legally standing, or moving, and whether  
29 such vehicles were occupied at the time of the accident. Every  
30 required accident report shall be made on a form prescribed by the  
31 chief of the Washington state patrol and each authority charged with  
32 the duty of receiving such reports shall provide sufficient report  
33 forms in compliance with the form devised. The report forms shall be  
34 designated so as to provide that a copy may be retained by the  
35 reporting person.

36 (5) The chief of the Washington state patrol shall adopt rules  
37 establishing the accident-reporting threshold for property damage  
38 accidents. Beginning October 1, 1987, the accident-reporting threshold

1 for property damage accidents shall be five hundred dollars. The  
2 accident-reporting threshold for property damage accidents shall be  
3 revised when necessary, but not more frequently than every two years.  
4 The revisions shall only be for the purpose of recognizing economic  
5 changes as reflected by an inflationary index recommended by the office  
6 of financial management. The revisions shall be guided by the change  
7 in the index for the time period since the last revision.

8 **Sec. 3.** RCW 46.52.070 and 1999 c 351 s 2 are each amended to read  
9 as follows:

10 (1) Any police officer of the state of Washington or of any county,  
11 city, town or other political subdivision, present at the scene of any  
12 accident or in possession of any facts concerning any accident whether  
13 by way of official investigation or otherwise shall make report thereof  
14 in the same manner as required of the parties to such accident and as  
15 fully as the facts in his possession concerning such accident will  
16 permit.

17 (2) The police officer shall report to the department, on a form  
18 prescribed by the director: (a) When a collision has occurred that  
19 results in a fatality; and (b) the identity of the operator of a  
20 vehicle involved in the collision when the officer has reasonable  
21 grounds to believe the operator caused the collision.

22 (3) The police officer shall report to the department, on a form  
23 prescribed by the director: (a) When a collision has occurred that  
24 results in a serious injury; (b) the identity of the operator of a  
25 vehicle involved in the collision when the officer has reasonable  
26 grounds to believe the operator who caused the serious injury may not  
27 be competent to operate a motor vehicle; and (c) the reason or reasons  
28 for the officer's belief.

29 (4) Nothing in this section exempts a police report from being  
30 completed and filed for an accident involving a law enforcement officer  
31 while on duty.

32 **Sec. 4.** RCW 46.52.130 and 2004 c 49 s 1 are each amended to read  
33 as follows:

34 (1) A certified abstract of the driving record shall be furnished  
35 only to:

36 (a) The individual named in the abstract;

1 (b) An employer or prospective employer or an agent acting on  
2 behalf of an employer or prospective employer, or a volunteer  
3 organization for which the named individual has submitted an  
4 application for a position that could require the transportation of  
5 children under eighteen years of age, adults over sixty-five years of  
6 age, or physically or mentally disabled persons;

7 (c) An employee or agent of a transit authority checking  
8 prospective volunteer vanpool drivers for insurance and risk management  
9 needs;

10 (d) The insurance carrier that has insurance in effect covering the  
11 employer or a prospective employer;

12 (e) The insurance carrier that has motor vehicle or life insurance  
13 in effect covering the named individual;

14 (f) The insurance carrier to which the named individual has  
15 applied;

16 (g) An alcohol/drug assessment or treatment agency approved by the  
17 department of social and health services, to which the named individual  
18 has applied or been assigned for evaluation or treatment; or

19 (h) City and county prosecuting attorneys.

20 (2) City attorneys and county prosecuting attorneys may provide the  
21 driving record to alcohol/drug assessment or treatment agencies  
22 approved by the department of social and health services to which the  
23 named individual has applied or been assigned for evaluation or  
24 treatment.

25 (3)(a) The director, upon proper request, shall furnish a certified  
26 abstract covering the period of not more than the last three years to  
27 insurance companies.

28 (b) The director may enter into a contractual agreement with an  
29 insurance company or its agent for the limited purpose of reviewing the  
30 driving records of existing policyholders for changes to the record  
31 during specified periods of time. The department shall establish a fee  
32 for this service, which must be deposited in the highway safety fund.  
33 The fee for this service must be set at a level that will not result in  
34 a net revenue loss to the state. Any information provided under this  
35 subsection, must be treated in the same manner and subject to the same  
36 restrictions as certified abstracts.

37 (4) Upon proper request, the director shall furnish a certified  
38 abstract covering a period of not more than the last five years to

1 state approved alcohol/drug assessment or treatment agencies, except  
2 that the certified abstract shall also include records of alcohol-  
3 related offenses as defined in RCW 46.01.260(2) covering a period of  
4 not more than the last ten years.

5 (5) Upon proper request, a certified abstract of the full driving  
6 record maintained by the department shall be furnished to a city or  
7 county prosecuting attorney, to the individual named in the abstract,  
8 to an employer or prospective employer or an agent acting on behalf of  
9 an employer or prospective employer of the named individual, or to a  
10 volunteer organization for which the named individual has submitted an  
11 application for a position that could require the transportation of  
12 children under eighteen years of age, adults over sixty-five years of  
13 age, or physically or mentally disabled persons, or to an employee or  
14 agent of a transit authority checking prospective volunteer vanpool  
15 drivers for insurance and risk management needs.

16 (6) The abstract, whenever possible, shall include:

17 (a) An enumeration of motor vehicle accidents in which the person  
18 was driving;

19 (b) The total number of vehicles involved;

20 (c) Whether the vehicles were legally parked or moving;

21 (d) Whether the vehicles were occupied at the time of the accident;

22 (e) Whether the accident resulted in any fatality;

23 (f) Any reported convictions, forfeitures of bail, or findings that  
24 an infraction was committed based upon a violation of any motor vehicle  
25 law;

26 (g) The status of the person's driving privilege in this state; and

27 (h) Any reports of failure to appear in response to a traffic  
28 citation or failure to respond to a notice of infraction served upon  
29 the named individual by an arresting officer.

30 (7) Certified abstracts furnished to prosecutors and alcohol/drug  
31 assessment or treatment agencies shall also indicate whether a recorded  
32 violation is an alcohol-related offense as defined in RCW 46.01.260(2)  
33 that was originally charged as one of the alcohol-related offenses  
34 designated in RCW 46.01.260(2)(b)(i).

35 (8) The abstract provided to the insurance company shall exclude  
36 any information, except that related to the commission of misdemeanors  
37 or felonies by the individual, pertaining to (~~law enforcement officers~~  
38 ~~or~~) fire fighters as defined in RCW 41.26.030(~~(, or any officer of the~~



1 ~~Washington state patrol,~~) while driving official vehicles in the  
2 performance of occupational duty. The abstract provided to the  
3 insurance company shall include convictions for RCW 46.61.5249 and  
4 46.61.525 except that the abstract shall report them only as negligent  
5 driving without reference to whether they are for first or second  
6 degree negligent driving. The abstract provided to the insurance  
7 company shall exclude any deferred prosecution under RCW 10.05.060,  
8 except that if a person is removed from a deferred prosecution under  
9 RCW 10.05.090, the abstract shall show the deferred prosecution as well  
10 as the removal.

11 (9) The director shall collect for each abstract the sum of five  
12 dollars, which shall be deposited in the highway safety fund.

13 (10) Any insurance company or its agent receiving the certified  
14 abstract shall use it exclusively for its own underwriting purposes and  
15 shall not divulge any of the information contained in it to a third  
16 party. No policy of insurance may be canceled, nonrenewed, denied, or  
17 have the rate increased on the basis of such information unless the  
18 policyholder was determined to be at fault. No insurance company or  
19 its agent for underwriting purposes relating to the operation of  
20 commercial motor vehicles may use any information contained in the  
21 abstract relative to any person's operation of motor vehicles while not  
22 engaged in such employment, nor may any insurance company or its agent  
23 for underwriting purposes relating to the operation of noncommercial  
24 motor vehicles use any information contained in the abstract relative  
25 to any person's operation of commercial motor vehicles.

26 (11) Any employer or prospective employer or an agent acting on  
27 behalf of an employer or prospective employer, or a volunteer  
28 organization for which the named individual has submitted an  
29 application for a position that could require the transportation of  
30 children under eighteen years of age, adults over sixty-five years of  
31 age, or physically or mentally disabled persons, receiving the  
32 certified abstract shall use it exclusively for his or her own purpose  
33 to determine whether the licensee should be permitted to operate a  
34 commercial vehicle or school bus, or operate a vehicle for a volunteer  
35 organization for purposes of transporting children under eighteen years  
36 of age, adults over sixty-five years of age, or physically or mentally  
37 disabled persons, upon the public highways of this state and shall not  
38 divulge any information contained in it to a third party.

1 (12) Any employee or agent of a transit authority receiving a  
2 certified abstract for its vanpool program shall use it exclusively for  
3 determining whether the volunteer licensee meets those insurance and  
4 risk management requirements necessary to drive a vanpool vehicle. The  
5 transit authority may not divulge any information contained in the  
6 abstract to a third party.

7 (13) Any alcohol/drug assessment or treatment agency approved by  
8 the department of social and health services receiving the certified  
9 abstract shall use it exclusively for the purpose of assisting its  
10 employees in making a determination as to what level of treatment, if  
11 any, is appropriate. The agency, or any of its employees, shall not  
12 divulge any information contained in the abstract to a third party.

13 (14) Release of a certified abstract of the driving record of an  
14 employee, prospective employee, or prospective volunteer requires a  
15 statement signed by: (a) The employee, prospective employee, or  
16 prospective volunteer that authorizes the release of the record, and  
17 (b) the employer or volunteer organization attesting that the  
18 information is necessary to determine whether the licensee should be  
19 employed to operate a commercial vehicle or school bus, or operate a  
20 vehicle for a volunteer organization for purposes of transporting  
21 children under eighteen years of age, adults over sixty-five years of  
22 age, or physically or mentally disabled persons, upon the public  
23 highways of this state. If the employer or prospective employer  
24 authorizes an agent to obtain this information on their behalf, this  
25 must be noted in the statement.

26 (15) Any negligent violation of this section is a gross  
27 misdemeanor.

28 (16) Any intentional violation of this section is a class C felony.

29 **Sec. 5.** RCW 46.63.030 and 2004 c 231 s 2 are each amended to read  
30 as follows:

31 (1) A law enforcement officer has the authority to issue a notice  
32 of traffic infraction:

33 (a) When the infraction is committed in the officer's presence;

34 (b) When the officer is acting upon the request of a law  
35 enforcement officer in whose presence the traffic infraction was  
36 committed;

1 (c) If an officer investigating at the scene of a motor vehicle  
2 accident has reasonable cause to believe that the driver of a motor  
3 vehicle involved in the accident has committed a traffic infraction; or

4 (d) When the notice of infraction is detected through the use of a  
5 photo enforcement system under RCW 46.63.160.

6 (2) A court may issue a notice of traffic infraction upon receipt  
7 of a written statement of the officer that there is reasonable cause to  
8 believe that an infraction was committed.

9 (3) Nothing in subsection (1) or (2) of this section precludes a  
10 law enforcement officer who is driving a motor vehicle involved in an  
11 accident while on duty from being issued a traffic citation if the law  
12 enforcement officer is at fault or otherwise caused the accident.

13 (4) If any motor vehicle without a driver is found parked,  
14 standing, or stopped in violation of this title or an equivalent  
15 administrative regulation or local law, ordinance, regulation, or  
16 resolution, the officer finding the vehicle shall take its registration  
17 number and may take any other information displayed on the vehicle  
18 which may identify its user, and shall conspicuously affix to the  
19 vehicle a notice of traffic infraction.

20 ((+4)) (5) In the case of failure to redeem an abandoned vehicle  
21 under RCW 46.55.120, upon receiving a complaint by a registered tow  
22 truck operator that has incurred costs in removing, storing, and  
23 disposing of an abandoned vehicle, an officer of the law enforcement  
24 agency responsible for directing the removal of the vehicle shall send  
25 a notice of infraction by certified mail to the last known address of  
26 the person responsible under RCW 46.55.105. The notice must be  
27 entitled "Littering--Abandoned Vehicle" and give notice of the monetary  
28 penalty. The officer shall append to the notice of infraction, on a  
29 form prescribed by the department of licensing, a notice indicating the  
30 amount of costs incurred as a result of removing, storing, and  
31 disposing of the abandoned vehicle, less any amount realized at  
32 auction, and a statement that monetary penalties for the infraction  
33 will not be considered as having been paid until the monetary penalty  
34 payable under this chapter has been paid and the court is satisfied  
35 that the person has made restitution in the amount of the deficiency  
36 remaining after disposal of the vehicle.

1        NEW SECTION.   **Sec. 6.**   This act is necessary for the immediate  
2   preservation of the public peace, health, or safety, or support of the  
3   state government and its existing public institutions, and takes effect  
4   immediately.

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