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**SUBSTITUTE HOUSE BILL 1339**

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**State of Washington                      62nd Legislature                      2011 Regular Session**

**By** House Judiciary (originally sponsored by Representatives Fitzgibbon, Hope, Rolfes, Appleton, Billig, Liias, Frockt, Haigh, Cody, Goodman, Moeller, Pedersen, and Kenney)

READ FIRST TIME 02/16/11.

1            AN ACT Relating to negligent driving resulting in substantial  
2 bodily harm, great bodily harm, or death of a vulnerable user of a  
3 public way; amending RCW 46.63.070; reenacting and amending RCW  
4 46.20.342; adding a new section to chapter 46.61 RCW; creating a new  
5 section; prescribing penalties; and providing an effective date.

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

7            NEW SECTION.    **Sec. 1.** A new section is added to chapter 46.61 RCW  
8 to read as follows:

9            (1) A person commits negligent driving in the second degree with a  
10 vulnerable user victim if, under circumstances not constituting  
11 negligent driving in the first degree, he or she operates a vehicle, as  
12 defined in RCW 46.04.670, in a manner that is both negligent and  
13 endangers or is likely to endanger any person or property, and he or  
14 she proximately causes the death, great bodily harm, or substantial  
15 bodily harm of a vulnerable user of a public way.

16            (2) The law enforcement officer or prosecuting authority issuing  
17 the notice of infraction for an offense under this section shall state  
18 on the notice of infraction that the offense was a proximate cause of

1 death, great bodily harm, or substantial bodily harm, as defined in RCW  
2 9A.04.110, of a vulnerable user of a public way.

3 (3) Persons under the age of sixteen who commit an infraction under  
4 this section are subject to the provisions of RCW 13.40.250.

5 (4) A person found to have committed negligent driving in the  
6 second degree with a vulnerable user victim shall be required to:

7 (a) Pay a monetary penalty of five thousand dollars, which may not  
8 be reduced to an amount less than one thousand dollars; and

9 (b) Have his or her driving privileges suspended for ninety days.

10 (5) In lieu of the penalties imposed under subsection (4) of this  
11 section, a person found to have committed negligent driving in the  
12 second degree with a vulnerable user victim who requests and personally  
13 appears for a hearing pursuant to RCW 46.63.070 (1) or (2) may elect  
14 to:

15 (a) Pay a penalty of two hundred fifty dollars;

16 (b) Attend traffic school for a number of days to be determined by  
17 the court pursuant to chapter 46.83 RCW;

18 (c) Perform community service for a number of hours to be  
19 determined by the court, which may not exceed one hundred hours, and  
20 which must include activities related to driver improvement and  
21 providing public education on traffic safety; and

22 (d) Submit certification to the court establishing that the  
23 requirements of this subsection have been met within one year of the  
24 hearing.

25 (6) If a person found to have committed a violation of this section  
26 elects the penalties imposed under subsection (5) of this section, the  
27 court may assess costs as the court deems appropriate for  
28 administrative processing.

29 (7) Except as provided in (b) of this subsection, if a person found  
30 to have committed a violation of this section elects the penalties  
31 imposed under subsection (5) of this section but does not complete all  
32 requirements of subsection (5) of this section within one year of the  
33 hearing:

34 (a)(i) The court shall impose a monetary penalty in the amount of  
35 five thousand dollars, which may not be reduced to an amount less than  
36 one thousand dollars; and

37 (ii) The person's driving privileges shall be suspended for ninety  
38 days.

1 (b) For good cause shown, the court may extend the period of time  
2 in which the person must complete the requirements of subsection (5) of  
3 this section before any of the penalties provided in this subsection  
4 are imposed.

5 (8) An offense under this section is a traffic infraction. To the  
6 extent not inconsistent with this section, the provisions of chapter  
7 46.63 RCW shall apply to infractions under this section. Procedures  
8 for the conduct of all hearings provided for in this section may be  
9 established by rule of the supreme court.

10 (9) If a person is penalized under subsection (4) of this section,  
11 then the court shall notify the department, and the department shall  
12 suspend the person's driving privileges. If a person fails to meet the  
13 requirements of subsection (5) of this section, the court shall notify  
14 the department that the person has failed to meet the requirements of  
15 subsection (5) of this section and the department shall suspend the  
16 person's driving privileges. Notice provided by the court under this  
17 subsection must be in a form specified by the department.

18 (10) Any act prohibited by this section that also constitutes a  
19 crime under any other law of this state may be the basis of prosecution  
20 under such other law notwithstanding that it may also be the basis for  
21 prosecution under this section.

22 (11) For the purposes of this section:

23 (a) "Great bodily harm" and "substantial bodily harm" have the same  
24 meaning as provided in RCW 9A.04.110.

25 (b) "Negligent" has the same meaning as provided in RCW  
26 46.61.525(2).

27 (c) "Vulnerable user of a public way" means:

28 (i) A pedestrian;

29 (ii) A person riding an animal; or

30 (iii) A person operating any of the following on a public way:

31 (A) A farm tractor or implement of husbandry, without an enclosed  
32 shell;

33 (B) A bicycle;

34 (C) An electric-assisted bicycle;

35 (D) An electric personal assistive mobility device;

36 (E) A moped;

37 (F) A motor-driven cycle; or

38 (G) A motorized foot scooter.

1           **Sec. 2.** RCW 46.20.342 and 2010 c 269 s 7 and 2010 c 252 s 4 are  
2 each reenacted and amended to read as follows:

3           (1) It is unlawful for any person to drive a motor vehicle in this  
4 state while that person is in a suspended or revoked status or when his  
5 or her privilege to drive is suspended or revoked in this or any other  
6 state. Any person who has a valid Washington driver's license is not  
7 guilty of a violation of this section.

8           (a) A person found to be (~~an~~) a habitual offender under chapter  
9 46.65 RCW, who violates this section while an order of revocation  
10 issued under chapter 46.65 RCW prohibiting such operation is in effect,  
11 is guilty of driving while license suspended or revoked in the first  
12 degree, a gross misdemeanor. Upon the first such conviction, the  
13 person shall be punished by imprisonment for not less than ten days.  
14 Upon the second conviction, the person shall be punished by  
15 imprisonment for not less than ninety days. Upon the third or  
16 subsequent conviction, the person shall be punished by imprisonment for  
17 not less than one hundred eighty days. If the person is also convicted  
18 of the offense defined in RCW 46.61.502 or 46.61.504, when both  
19 convictions arise from the same event, the minimum sentence of  
20 confinement shall be not less than ninety days. The minimum sentence  
21 of confinement required shall not be suspended or deferred. A  
22 conviction under this subsection does not prevent a person from  
23 petitioning for reinstatement as provided by RCW 46.65.080.

24           (b) A person who violates this section while an order of suspension  
25 or revocation prohibiting such operation is in effect and while the  
26 person is not eligible to reinstate his or her driver's license or  
27 driving privilege, other than for a suspension for the reasons  
28 described in (c) of this subsection, is guilty of driving while license  
29 suspended or revoked in the second degree, a gross misdemeanor. For  
30 the purposes of this subsection, a person is not considered to be  
31 eligible to reinstate his or her driver's license or driving privilege  
32 if the person is eligible to obtain an ignition interlock driver's  
33 license but did not obtain such a license. This subsection applies  
34 when a person's driver's license or driving privilege has been  
35 suspended or revoked by reason of:

36           (i) A conviction of a felony in the commission of which a motor  
37 vehicle was used;

38           (ii) A previous conviction under this section;

1 (iii) A notice received by the department from a court or diversion  
2 unit as provided by RCW 46.20.265, relating to a minor who has  
3 committed, or who has entered a diversion unit concerning an offense  
4 relating to alcohol, legend drugs, controlled substances, or imitation  
5 controlled substances;

6 (iv) A conviction of RCW 46.20.410, relating to the violation of  
7 restrictions of an occupational driver's license, a temporary  
8 restricted driver's license, or an ignition interlock driver's license;

9 (v) A conviction of RCW 46.20.345, relating to the operation of a  
10 motor vehicle with a suspended or revoked license;

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

13 (vii) A conviction of RCW 46.61.024, relating to attempting to  
14 elude pursuing police vehicles;

15 (viii) A conviction of RCW 46.61.212(4), relating to reckless  
16 endangerment of emergency zone workers;

17 (ix) A conviction of RCW 46.61.500, relating to reckless driving;

18 (x) A conviction of RCW 46.61.502 or 46.61.504, relating to a  
19 person under the influence of intoxicating liquor or drugs;

20 (xi) A conviction of RCW 46.61.520, relating to vehicular homicide;

21 (xii) A conviction of RCW 46.61.522, relating to vehicular assault;

22 (xiii) A conviction of RCW 46.61.527(4), relating to reckless  
23 endangerment of roadway workers;

24 (xiv) A conviction of RCW 46.61.530, relating to racing of vehicles  
25 on highways;

26 (xv) A conviction of RCW 46.61.685, relating to leaving children in  
27 an unattended vehicle with motor running;

28 (xvi) A conviction of RCW 46.61.740, relating to theft of motor  
29 vehicle fuel;

30 (xvii) A conviction of RCW 46.64.048, relating to attempting,  
31 aiding, abetting, coercing, and committing crimes;

32 (xviii) An administrative action taken by the department under  
33 chapter 46.20 RCW; (~~or~~)

34 (xix) A conviction of a local law, ordinance, regulation, or  
35 resolution of a political subdivision of this state, the federal  
36 government, or any other state, of an offense substantially similar to  
37 a violation included in this subsection; or

1        (xx) A finding that a person has committed a traffic infraction  
2 under section 1 of this act and suspension of driving privileges  
3 pursuant to section 1 (4)(b) or (7)(a)(ii) of this act.

4        (c) A person who violates this section when his or her driver's  
5 license or driving privilege is, at the time of the violation,  
6 suspended or revoked solely because (i) the person must furnish proof  
7 of satisfactory progress in a required alcoholism or drug treatment  
8 program, (ii) the person must furnish proof of financial responsibility  
9 for the future as provided by chapter 46.29 RCW, (iii) the person has  
10 failed to comply with the provisions of chapter 46.29 RCW relating to  
11 uninsured accidents, (iv) the person has failed to respond to a notice  
12 of traffic infraction, failed to appear at a requested hearing,  
13 violated a written promise to appear in court, or has failed to comply  
14 with the terms of a notice of traffic infraction or citation, as  
15 provided in RCW 46.20.289, (v) the person has committed an offense in  
16 another state that, if committed in this state, would not be grounds  
17 for the suspension or revocation of the person's driver's license, (vi)  
18 the person has been suspended or revoked by reason of one or more of  
19 the items listed in (b) of this subsection, but was eligible to  
20 reinstate his or her driver's license or driving privilege at the time  
21 of the violation, or (vii) the person has received traffic citations or  
22 notices of traffic infraction that have resulted in a suspension under  
23 RCW 46.20.267 relating to intermediate drivers' licenses, or any  
24 combination of (c)(i) through (vii) of this subsection, is guilty of  
25 driving while license suspended or revoked in the third degree, a  
26 misdemeanor. For the purposes of this subsection, a person is not  
27 considered to be eligible to reinstate his or her driver's license or  
28 driving privilege if the person is eligible to obtain an ignition  
29 interlock driver's license but did not obtain such a license.

30        (2) Upon receiving a record of conviction of any person or upon  
31 receiving an order by any juvenile court or any duly authorized court  
32 officer of the conviction of any juvenile under this section, the  
33 department shall:

34        (a) For a conviction of driving while suspended or revoked in the  
35 first degree, as provided by subsection (1)(a) of this section, extend  
36 the period of administrative revocation imposed under chapter 46.65 RCW  
37 for an additional period of one year from and after the date the person

1 would otherwise have been entitled to apply for a new license or have  
2 his or her driving privilege restored; or

3 (b) For a conviction of driving while suspended or revoked in the  
4 second degree, as provided by subsection (1)(b) of this section, not  
5 issue a new license or restore the driving privilege for an additional  
6 period of one year from and after the date the person would otherwise  
7 have been entitled to apply for a new license or have his or her  
8 driving privilege restored; or

9 (c) Not extend the period of suspension or revocation if the  
10 conviction was under subsection (1)(c) of this section. If the  
11 conviction was under subsection (1)(a) or (b) of this section and the  
12 court recommends against the extension and the convicted person has  
13 obtained a valid driver's license, the period of suspension or  
14 revocation shall not be extended.

15 **Sec. 3.** RCW 46.63.070 and 2006 c 327 s 7 are each amended to read  
16 as follows:

17 (1) Any person who receives a notice of traffic infraction shall  
18 respond to such notice as provided in this section within fifteen days  
19 of the date of the notice.

20 (2) If the person determined to have committed the infraction does  
21 not contest the determination the person shall respond by completing  
22 the appropriate portion of the notice of infraction and submitting it,  
23 either by mail or in person, to the court specified on the notice. A  
24 check or money order in the amount of the penalty prescribed for the  
25 infraction must be submitted with the response. When a response which  
26 does not contest the determination is received, an appropriate order  
27 shall be entered in the court's records, and a record of the response  
28 and order shall be furnished to the department in accordance with RCW  
29 46.20.270.

30 (3) If the person determined to have committed the infraction  
31 wishes to contest the determination the person shall respond by  
32 completing the portion of the notice of infraction requesting a hearing  
33 and submitting it, either by mail or in person, to the court specified  
34 on the notice. The court shall notify the person in writing of the  
35 time, place, and date of the hearing, and that date shall not be sooner  
36 than seven days from the date of the notice, except by agreement.

1 (4) If the person determined to have committed the infraction does  
2 not contest the determination but wishes to explain mitigating  
3 circumstances surrounding the infraction the person shall respond by  
4 completing the portion of the notice of infraction requesting a hearing  
5 for that purpose and submitting it, either by mail or in person, to the  
6 court specified on the notice. The court shall notify the person in  
7 writing of the time, place, and date of the hearing.

8 (5)(a) Except as provided in (b) (~~and~~), (c), and (d) of this  
9 subsection, in hearings conducted pursuant to subsections (3) and (4)  
10 of this section, the court may defer findings, or in a hearing to  
11 explain mitigating circumstances may defer entry of its order, for up  
12 to one year and impose conditions upon the defendant the court deems  
13 appropriate. Upon deferring findings, the court may assess costs as  
14 the court deems appropriate for administrative processing. If at the  
15 end of the deferral period the defendant has met all conditions and has  
16 not been determined to have committed another traffic infraction, the  
17 court may dismiss the infraction.

18 (b) A person may not receive more than one deferral within a seven-  
19 year period for traffic infractions for moving violations and more than  
20 one deferral within a seven-year period for traffic infractions for  
21 nonmoving violations.

22 (c) A person who is the holder of a commercial driver's license or  
23 who was operating a commercial motor vehicle at the time of the  
24 violation may not receive a deferral under this section.

25 (d) A person who commits negligent driving in the second degree  
26 with a vulnerable user victim may not receive a deferral for this  
27 infraction under this section.

28 (6) If any person issued a notice of traffic infraction:

29 (a) Fails to respond to the notice of traffic infraction as  
30 provided in subsection (2) of this section; or

31 (b) Fails to appear at a hearing requested pursuant to subsection  
32 (3) or (4) of this section;

33 the court shall enter an appropriate order assessing the monetary  
34 penalty prescribed for the traffic infraction and any other penalty  
35 authorized by this chapter and shall notify the department in  
36 accordance with RCW 46.20.270, of the failure to respond to the notice  
37 of infraction or to appear at a requested hearing.



1        NEW SECTION.   **Sec. 4.**   This act applies to infractions committed on  
2   or after the effective date of this section.

3        NEW SECTION.   **Sec. 5.**   This act takes effect July 1, 2012.

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