

---

## Judiciary Committee

---

### HB 2771

**Title:** An act relating to creating an administrative sobriety checkpoint program.

**Brief Description:** Creating an administrative sobriety checkpoint program.

**Sponsors:** Representatives Lantz and Goodman; by request of Governor Gregoire.

#### Brief Summary of Bill

- Allows law enforcement agencies to apply to superior court for a warrant authorizing the agency to conduct a sobriety checkpoint.
- Requires the warrant to contain specific information and requires the agency to publish notice of the warrant before implementing the checkpoint program.
- Makes it a gross misdemeanor for failing to stop at a checkpoint when requested, and provides immunity for any person, law enforcement agency, or other governmental entity for stopping or failing to stop a vehicle unless the person, agency, or entity acted with intentional misconduct.

**Hearing Date:** 1/30/08

**Staff:** Trudes Tango (786-7384).

#### Background:

In 1988, the Washington state Supreme Court declared a Seattle Police Department's sobriety checkpoint program unconstitutional under the state's constitution. A few years later, the United States Supreme Court held that sobriety checkpoints do not violate the Fourth Amendment to the U.S. Constitution. However, Washington courts have often declared that Washington's constitution provides greater protection against searches and seizures than does the Fourth Amendment to the Federal Constitution.

In *Seattle v. Mesiani*, 110 Wn.2d 454, (1988), the state Supreme Court held that Seattle's checkpoint program violated article 1, section 7 of the state constitution. That provision reads:

---

*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

"No person shall be disturbed in his private affairs, or his home invaded, without authority of law."

Generally, a search or seizure is not valid unless it is authorized by a warrant or it falls within a few narrow exceptions to the warrant requirement. The court stated that sobriety checkpoints involve seizures and therefore they are valid only if there is "authority of law." The court found that there was no "authority of law" in the *Mesiani* case because the checkpoints did not fall within any of the exceptions the court has recognized to the warrant requirement. The court also examined cases from other jurisdictions and recognized that courts generally apply a balancing test to determine the constitutionality of a search and seizure. The court weighs the gravity of the public concern served by the seizure, the degree to which the seizure advances the public interest, and the severity of the interference with individual liberty.

The concurring opinion in *Mesiani* suggested that a checkpoint program might be valid if it was based on a statute that balanced the state's interest in reducing impaired driving with the driver's interest in privacy, taking into account the following factors: (1) the amount of discretion permitted individual officers at the checkpoint; (2) the checkpoint location; (3) the sufficiency of an advance notice to approaching drivers; (4) the safety of the checkpoint; (5) the notice to the public at large; (6) the amount of time drivers are detained; (7) the thoroughness of the program's guidelines; and (8) the vehicle selection process.

### **Summary of Bill:**

The chief law enforcement officer of any jurisdiction may apply to superior court for a warrant authorizing the agency to conduct a sobriety checkpoint. A sobriety checkpoint will allow officers to stop all or a designated sequence of vehicles, briefly question the drivers to determine if they have been driving under the influence of liquor or drugs, and direct a driver who exhibits signs of being under the influence off the roadway for investigation or testing.

The application for a warrant to conduct a sobriety checkpoint must include:

- (1) geographic locations, dates, and times when the checkpoint program will operate;
- (2) duration of the program;
- (3) measures the agency will take to educate the public about the program, including the configuration and size of the checkpoint, the language spoken, and location of checkpoint signs and barriers;
- (4) measures the agency will take to promote the safety of vehicle passengers, pedestrians, and officers;
- (5) a statement that all or a designated sequence of cars will be stopped;
- (6) a statement that a car will not be stopped for longer than the time the agency has set by policy, if there are no reasonable grounds to believe that the driver or passenger has committed an offense;
- (7) a statement that a driver will not be required to exit the roadway unless an officer has reasonable grounds to believe that the driver or passenger has committed an offense; and
- (8) statistical information based on data from the Washington State Patrol, Washington Traffic Safety Commission, or other sources showing that there have been statistically significant alcohol-involved or drug-involved collisions within a one mile radius of the proposed checkpoint site.

The court must issue a warrant if it finds sufficient information in the affidavit to conclude that the checkpoint advances the agency's interest, taking into account potential arrests and the deterrent effect, and minimizes intrusions into privacy rights.

If the warrant is issued, the agency must publish a copy of the warrant in the legal section of the newspaper of record and post a copy on the county website, if the county has a website. Notice must be published at least once, and not more than 10 days nor less than one day prior to the date the checkpoint will be operated. Within 20 days of the checkpoint being completed, the agency must return the warrant to the court with certain information, including the number of cars stopped and arrests made.

A person, agency, or government entity is not liable for damages caused from stopping or not stopping a car at an authorized checkpoint unless the person, agency, or entity acts with intentional misconduct.

Failing to stop at a checkpoint when requested is a gross misdemeanor.

**Appropriation:** None.

**Fiscal Note:** Requested on 1/16/08.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.