

# HOUSE BILL REPORT

## 2SHB 2742

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### As Passed Legislature

**Title:** An act relating to accountability for persons driving under the influence of intoxicating liquor or drugs.

**Brief Description:** Addressing accountability for persons driving under the influence of intoxicating liquor or drugs.

**Sponsors:** House Committee on Transportation (originally sponsored by Representatives Goodman, Lias, Sells, Hasegawa, Maxwell, Roberts, Jacks, Carlyle, Rolfes, Simpson, O'Brien and Morrell).

### Brief History:

#### Committee Activity:

Judiciary: 1/21/10, 1/28/10 [DPS];

Transportation: 2/1/10, 2/3/10 [DP2S(w/o sub JUDI)].

#### Floor Activity:

Passed House: 2/12/10, 97-0.

Senate Amended.

Passed Senate: 3/5/10, 48-0.

House Concurred.

Passed House: 3/9/10, 95-0.

Passed Legislature.

### Brief Summary of Second Substitute Bill

- Broadens the category of persons who may apply for ignition interlock licenses (IIL) and removes the requirement that a person in deferred prosecution apply for an IIL.
- Expands the employer exception to ignition interlock requirements.
- Provides that an ignition interlock requirement on a person's regular driver's license may not be removed until certain conditions are met.
- Changes the definitions of "prior offenses" and "within seven years" for the purposes of sentencing.
- Addresses liability of municipalities and counties when a person is under probation or supervision and required to use an ignition interlock device.

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*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.*

- Makes other changes to driving-related statutes.

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## HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Flannigan, Kelley, Kirby, Ormsby, Roberts, Ross and Warnick.

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

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## HOUSE COMMITTEE ON TRANSPORTATION

**Majority Report:** The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Judiciary. Signed by 27 members: Representatives Clibborn, Chair; Liias, Vice Chair; Roach, Ranking Minority Member; Rodne, Assistant Ranking Minority Member; Armstrong, Campbell, Dickerson, Driscoll, Eddy, Ericksen, Finn, Flannigan, Herrera, Johnson, Klippert, Kristiansen, Moeller, Morris, Nealey, Rolfes, Sells, Shea, Springer, Takko, Upthegrove, Williams and Wood.

**Staff:** Debbie Driver (786-7143).

### **Background:**

#### License Suspension of Persons Arrested for DUI.

When a person is arrested for driving under the influence of alcohol or any drug (DUI), the person's driver's license may be suspended as a result of an administrative action by the Department of Licensing (DOL) and as a result of a criminal conviction. Administrative suspension periods last from 90 days to two years depending on whether the driver refused the BAC and whether there have been prior offenses. The suspension based on a criminal conviction also varies, ranging from 90 days to four years, depending on the offender's BAC level and prior offenses.

#### Ignition Interlock License.

An ignition interlock license (IIL) authorizes a person to drive a noncommercial vehicle with an ignition interlock device while his or her regular driver's license is suspended for alcohol-related DUI. Persons who have an administrative suspension may apply for an IIL. Persons who are suspended based on a conviction are ordered by the court to apply for an IIL. The court may waive the requirement under certain circumstances. If the requirement is waived, the court must order the person to submit to alcohol monitoring. Persons who receive a deferred prosecution must also apply for an IIL. An IIL is not available for persons convicted of DUI based on drug use. A person is not eligible to receive an IIL if the person has been convicted of vehicular homicide or vehicular assault within seven years of the current offense. The IIL lasts for the length of time the person's regular driver's license is suspended.

An ignition interlock device is not required on cars owned by the person's employer and driven as a requirement of employment during working hours. The person must provide the DOL with a declaration from the employer that the person is required to drive a vehicle owned by the employer.

There is a \$100 licensing fee for an IIL. Unless costs are waived by the ignition interlock company or the person is indigent, the person must pay for installing and leasing the device plus an additional \$20 per month. The \$20 is deposited into an account and must be used to assist indigent persons with the costs of using ignition interlock devices.

#### Additional Ignition Interlock Requirements.

After the suspension period of the person's regular license expires and the person is eligible to reinstate his or her regular license, the person must drive with an ignition interlock device for either one year, five years, or 10 years, depending on whether the person was previously restricted. This requirement is not related to the IIL.

#### Prior Offenses.

The penalties and license suspension periods under the DUI statutes vary depending on, among other things, whether the person has had any prior offenses within seven years. The terms "prior offense" and "within seven years" are defined. In a recent Washington Supreme Court (Court) case, the Court held that the terms are ambiguous. According to the Court, the terms, when read together, could mean either: (1) that the offense to be counted as a "prior" must have occurred before the offense for which the defendant is being sentenced; or (2) that the offense to be counted as a prior could have occurred either before or after -- so long as it is within seven years of -- the offense for which the defendant is being sentenced.

In the case, one of the defendants was arrested in 2001 for DUI. He received a deferred prosecution. In 2005 he was again arrested for DUI. His deferred prosecution was revoked. The issue was whether the 2005 conviction counts as a "prior offense within seven years" of the 2001 deferred prosecution, for purposes of sentencing. The Court stated that the term "within" may mean any time before, during, or after a specified period. The prosecution argued that had the Legislature wished to limit prior offenses to those that occur only before the current offense, it could have done so by specifying that "within seven years" meant seven years before the current offense.

#### **Summary of Second Substitute Bill:**

##### Ignition Interlock License.

Changes are made regarding who may apply for an IIL. A person who has been convicted of vehicular homicide or vehicular assault due to driving while under the influence may apply for an IIL. Persons who have lost their licenses due to DUI based on drug use may apply for an IIL. Persons who enter into deferred prosecutions for DUI are no longer required to apply for an IIL.

The employer vehicle exception is expanded to include those vehicles leased or rented by the person's employer and vehicles whose care or maintenance is the temporary responsibility of the employer and driven at the direction of the employer.

The requirement for a court to order alcohol monitoring is narrowed to cases in which the court has ordered that the person refrain from consuming alcohol.

The list of circumstances under which the court may waive the requirement that a person apply for an IIL is expanded. If a court finds that a person is not eligible to receive an IIL, the court is not required to make any further subsequent inquiry or determination as to the person's eligibility.

#### Additional Ignition Interlock Requirements.

When a person has his or her regular driver's license reinstated and an ignition interlock device is required to be installed, the requirement shall remain in effect until the DOL receives a declaration from the person's ignition interlock vendor certifying that there have been no "incidents" in the four consecutive months prior to the date the requirement expires. An "incident" is: (1) an attempt to start the vehicle with a BAC of .04 or higher; (2) failure to take or pass any required re-test; or (3) failure of the person to appear at the vendor when required.

#### Prior Offenses.

The definitions of "prior offenses" and within seven years are amended. A prior offense "within seven years" means that the arrest for the prior offense occurred either before or *after* the arrest for the current offense. If a deferred prosecution is revoked based on a subsequent DUI-related conviction, the subsequent conviction may not be treated as a prior offense of the revoked deferred prosecution for the purposes of sentencing.

#### Liability.

If a person is required, as part of the person's judgment and sentence, to install an ignition interlock device on all motor vehicles operated by the person and the person is under the jurisdiction of the municipality or county probation or supervision department, the probation or supervision department must verify the installation of an ignition interlock device. The county probation or supervision department satisfies the requirement to verify the installation if it receives a written verification by a company stating that it has installed the required device on a vehicle owned or operated by the person. The municipality or county has no further obligation to supervise the use of the device by the person and is not civilly liable for any injuries or damages caused by the person for failing to use a device or for driving under the influence of intoxicating liquor or any drug.

#### Other Provisions.

It is a gross misdemeanor, rather than a misdemeanor, for a person to drive a vehicle without an ignition interlock device when the person is required to have one.

A person is driving while license suspended in the second degree if he or she is driving while his or her license is suspended and the person is eligible to obtain an IIL but did not obtain one.

Procedures for the DOL to cancel IILs and occupational and temporary restricted licenses are amended to be consistent with current practices for cancellations of regular driver's licenses.

The effective date of cancellation is 45 days, rather than 15 days, from the date of mailing the notice of cancellation.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect on January 1, 2011.

**Staff Summary of Public Testimony (Judiciary):**

(In support) This bill is a result of a work group that met during the interim. The ignition interlock license (IIL) program has already been successful in reducing the number of DUIs on the road. This bill expands the program and makes the license available to more drivers. The ignition interlock license gives people an opportunity to drive legally and increases the incentives for people to behave legally. Currently people who have lost their license for a DUI because of drug use cannot get a license. The employer exemptions are important to keep people employed. The bill allows mechanics and valets to keep working and exempts cars that are rented or leased by the employer. The bill removes the unnecessary requirement that offenders in deferred prosecution apply for an IIL. The deferred prosecution offenders never lose their driver's license when they are in deferment; therefore, it does not make sense to require those people to apply for an IIL. They are still required to have an ignition interlock device installed under the deferred prosecution. This bill will impose additional controls on people. It extends the technology to others to keep the roads safe.

(With concerns) The bill would increase liability to the counties rather than decrease liability. In every case, the DUI offender will be required to get an ignition interlock device installed and will be on probation, unless the court imposes a sentence of one year. Courts and probation departments have no way of knowing which cars are registered to the offender. The bill is not clear how the court or probation department is supposed to verify whether the offender has installed a device. Court staff are not trained to know if a device has been installed correctly. Courts should not be required to order offenders to apply for an IIL. The bill would require the court to continually monitor offenders to determine, on a periodic basis, whether or not the offender is eligible to apply for the license. That would require multiple hearings. The bill is not clear about how courts will enforce the requirement that an offender be on alcohol monitoring or what happens if the offender cannot afford alcohol monitoring. Courts do not have the resources or the data to determine whether a person is eligible to apply for the license. That requirement should be removed.

(Opposed) None.

**Staff Summary of Public Testimony (Transportation):**

(In support) A work group spent time over the summer working on ideas to improve the program. This bill represents implementation of those ideas and is a big step forward for the ignition interlock program. There is a need to control drunk drivers and suspending their licenses doesn't work. Putting an ignition interlock device on their vehicles does work. Over

10,000 devices have been installed to date which have resulted in 15 lives saved on state highways. The bill does result in some loss of revenue to the Ignition Interlock Account but there is sufficient funding to support those indigent persons eligible for payment of the devices and licenses. The bill results in keeping the devices on the vehicles of drunk drivers. Given the concerns about getting necessary systems ready by the bill's implementation date, delaying implementation would be an acceptable solution.

(In support with exceptions) One foreseeable impact driven by language in the bill may be the transfer of liability from counties and municipalities to the Department of Licensing (DOL) or the Washington State Patrol (WSP). These agencies would become the sole monitors of compliance which may lead to an increase in the number of hearings. To put this into context, the WSP has one trooper responsible for the statewide Ignition Interlock Program. Although support exists for the bill, the liability issues to the DOL and the WSP should be resolved.

(Opposed) None.

**Persons Testifying** (Judiciary): (In support) Representative Goodman, prime sponsor; Patricia Fulton, Washington Association of Criminal Defense Lawyers and Washington Defense Association; and Courtney Popp, Washington State Patrol.

(With concerns) Glenn Phillips, District and Municipal Court Judges Association and Mark Eide, King County District Court.

**Persons Testifying** (Transportation): (In support) Representative Goodman, prime sponsor.

(In support with exceptions) Courtney Popp, Washington Traffic Safety Commission and Washington State Patrol.

**Persons Signed In To Testify But Not Testifying** (Judiciary): None.

**Persons Signed In To Testify But Not Testifying** (Transportation): None.