

HOUSE BILL REPORT

E2SHB 1789

As Passed Legislature

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

Brief Description: Addressing accountability for persons driving or being in physical control of a vehicle while under the influence of intoxicating liquor or any drug.

Sponsors: House Committee on Transportation (originally sponsored by Representatives Goodman, Pedersen, Roberts and Miloscia).

Brief History:

Committee Activity:

Judiciary: 2/14/11, 2/17/11 [DPS];

Transportation: 2/22/11, 2/24/11 [DP2S(w/o sub JUDI)].

Floor Activity:

Passed House: 3/7/11, 96-0.

Senate Amended.

Passed Senate: 4/8/11, 48-0.

House Concurred.

Passed House: 4/14/11, 97-0.

Passed Legislature.

Brief Summary of Engrossed Second Substitute Bill

- Imposes ignition interlock requirements on certain persons convicted of reckless driving or negligent driving in the first degree.
- Changes the definition of "prior offenses" and makes other changes to the driving under the influence (DUI) statutes.
- Explicitly authorizes courts to establish DUI courts and creates provisions governing victim impact panels.
- Increases the fee imposed on persons convicted of DUI, vehicular homicide, or vehicular assault.

HOUSE COMMITTEE ON JUDICIARY

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.

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Shea, Assistant Ranking Minority Member; Chandler, Frockt, Kirby, Klippert, Nealey, Orwall, Rivers and Roberts.

Minority Report: Do not pass. Signed by 2 members: Representatives Rodne, Ranking Minority Member; Eddy.

Staff: Trudes Tango (786-7384).

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 26 members: Representatives Clibborn, Chair; Billig, Vice Chair; Liias, Vice Chair; Armstrong, Ranking Minority Member; Hargrove, Assistant Ranking Minority Member; Angel, Asay, Finn, Fitzgibbon, Jinkins, Johnson, Klippert, Kristiansen, Ladenburg, McCune, Moeller, Moscoso, Overstreet, Reykdal, Rivers, Rolfes, Ryu, Shea, Takko, Upthegrove and Zeiger.

Minority Report: Do not pass. Signed by 1 member: Representative Eddy.

Staff: Debbie Driver (786-7143).

Background:

Gross Misdemeanor Driving Under the Influence.

The misdemeanor driving under the influence (DUI) law contains a complex system of mandatory minimum penalties that escalate based on the number of "prior offenses" the offender has within seven years and the offender's blood or breath alcohol concentration (BAC) for the current offense. There are both criminal and administrative consequences for DUI. Criminal penalties for a conviction include jail time, driver's license suspension, monetary fines, alcohol assessment and treatment, and ignition interlock requirements. Administrative consequences include license suspension and ignition interlock requirements, whether or not the person is ever charged or convicted.

Prior Offenses.

"Prior offenses " include convictions for: (a) DUI; (b) vehicular homicide and vehicular assault if either was committed while under the influence of alcohol or drugs; (c) negligent driving in the first degree, reckless driving and reckless endangerment, if the original charge was DUI, vehicular homicide, or vehicular assault; and (d) an equivalent out-of-state offense. In addition, a deferred prosecution for DUI or negligent driving in the first degree counts as a prior offense.

Felony DUI.

A conviction for DUI is a class C felony if the driver has: (a) four or more DUI-related prior offenses within 10 years; or (b) any prior conviction of a DUI-related vehicular homicide or vehicular assault, or a comparable out-of-state conviction.

License Suspension and Ignition Interlock Requirements.

Regardless of whether a driver is charged with or convicted of DUI, the Department of Licensing (DOL) will suspend a person's drivers license if the driver's BAC is .08 or higher or if the driver refused to take the BAC. Depending on the circumstances, an administrative license suspension can range from 90 days to two years. Therefore, it is possible for a person to first have his or her license suspended under an administrative suspension and then have his or her license suspended based on a criminal conviction for the same incident.

After the suspension period expires and the person is eligible to reinstate his or her regular license, the person must drive with an ignition interlock device (IID) for either one year, five years, or 10 years, depending on whether the person was previously restricted.

Fees Imposed on Offenders.

In addition to other monetary penalties, a fee of \$125 is imposed on persons convicted, sentenced to a lesser charge, or given a deferred prosecution, as a result of an arrest for DUI, vehicular homicide, or vehicular assault. The stated purpose of the fee is to fund the state toxicology laboratory and the Washington State Patrol for grants and activities to increase the conviction rate and decrease the number of DUIs. The court may suspend all or part of the fee if it finds that the offender is not able to pay. The clerk of the court collects the fee and distributes it as follows:

- 40 percent is distributed between the state and city or county government, based on existing statutes dividing the noninterest portion of fees collected by courts of limited jurisdiction and superior courts;
- 60 percent is forwarded to the State Treasurer to be deposited in the following ways:
 - (a) 15 percent in the Death Investigations Account to fund the Washington State Toxicology Laboratory's BAC testing programs; and
 - (b) 85 percent in the State Patrol Highway Account to fund activities to increase the conviction rate and decrease the incidences of DUI.

DUI Victim Impact Panels.

A person convicted of DUI, or granted a deferred prosecution on a DUI charge, may be ordered to attend an educational program that focuses on "the emotional, physical, and financial suffering of victims injured by persons convicted of DUI." There is nothing in statute that requires victim impact panels (VIP) to be conducted by certain entities or organizations. Some courts, such as King County District Court, have adopted minimum standards for VIPs.

Specialty Courts.

A specialty or therapeutic court, which may be created within superior court, often requires the offender to undergo treatment, counseling, and educational programs. Some superior courts have established drug courts and mental health courts. At least five counties have specialty courts for offenders convicted of DUI.

Summary of Engrossed Second Substitute Bill:

Prior Offenses.

The definition of prior offenses is expanded to include a conviction for vehicular assault or vehicular homicide, based on driving in a reckless manner or driving with the disregard for the safety of others, if the original charge was filed as a vehicular assault or vehicular homicide, based on DUI.

Felony DUI.

The offense of DUI becomes a felony DUI if the person has ever previously been convicted of felony DUI in Washington.

Ignition Interlock Requirements.

When calculating the time a person is required to have an IID installed, the DOL must give a person day-for-day credit for the time period, starting from the date of the incident, during which the person kept an IID installed.

A person convicted of negligent driving in the first degree must install an ignition interlock device for six months on all vehicles operated by the person if the person has any prior offense within seven years, as defined in the DUI statutes. A person convicted of reckless driving who has any prior offense within seven years must install an ignition interlock device for six months if the original charge was filed as a DUI. A person convicted of reckless driving, whether or not the person has any prior offenses, must install an ignition interlock device for six months if the original charge was filed as vehicular assault based on DUI or vehicular homicide based on DUI.

Fees Imposed on Offenders.

The \$125 fee imposed on offenders is increased to \$200. Of the total amount, \$175 must be distributed in the same manner as the current fee is distributed, and \$25 of the fee must be deposited into the Highway Safety Account to be used solely for funding WTSC grants to reduce statewide collisions caused by DUI. Grants awarded may be for projects that encourage collaboration with other community, governmental, and private organizations, and that use innovative approaches based on best practices or proven strategies. Grant recipients may include DUI courts and jurisdictions implementing victim impact panel registries.

DUI Courts.

Counties may establish and operate DUI courts. A jurisdiction seeking state funds for a DUI court must first exhaust all federal funding that is available to support a DUI court and provide a dollar-for-dollar match of state moneys. State money must be used to supplement, not supplant, other funds. The DUI courts already in existence as of January 1, 2011, are not required to match state funds until June 30, 2014. Minimum requirements are created for DUI courts established under the bill.

Victim Impact Panels.

The Washington Traffic Safety Commission (WTSC) may develop and maintain a registry of qualified VIPs and may work with VIP organizations to develop the registry. When a court requires an offender to attend a VIP, the court may refer the offender to a VIP listed on the registry. To be listed on the registry, the VIP:

- must address the effects of impaired driving and address alternatives to drinking and driving;

- should strive to have at least two different speakers, one of whom is a victim survivor, to present their stories in person for at least 60 minutes;
- must have policies and procedures to recruit, screen, train, and provide feedback and support to the panelists;
- must charge a reasonable fee to persons required to attend, unless ordered otherwise by the court;
- must have a policy to prohibit admittance of anyone under the influence or anyone whose actions or behavior are inappropriate;
- must maintain attendance records for at least five years;
- must make reasonable efforts to use a facility that meets standards established by the Americans with Disabilities Act;
- may provide referral information to other community services; and
- must have a designated facilitator responsible for communicating with the courts and probation departments regarding attendance and responsible for compliance with the minimum standards.

Other Provisions.

When a court imposes alcohol monitoring for a person under the provisions governing ignition interlocks licenses, the monitoring must be for the period of time of the mandatory license suspension.

Language is added to the sentencing enhancement for vehicular homicide to make it explicit that the enhancement is mandatory, must be served in total confinement, and must run consecutively to all other sentencing provisions.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect on September 1, 2011, except for sections 10 through 15, relating to DUI courts, VIPs, and the increased monetary fee, which take effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony (Judiciary):

(In support) This bill is a product of the Impaired Driving Work Group that brought all stakeholders together. Ignition interlock devices makes the car hold the driver accountable. Three out of four people who get their licenses suspended, end up driving anyway. Ignition interlock devices are a good deterrent and there needs to be more people using them. This bill addresses the problem of offenders pleading down to lesser offenses. Of the 40,000 arrests for DUI per year, about 8,000 result in convictions for lesser offenses such as reckless driving or negligent driving in the first degree. There is not as much accountability for those lesser offenses. This bill requires offenders for those cases to install IIDs. Deferred prosecution should be available at least one more time if there is intensive treatment involved. Treatment works, but sometimes relapsing is a part of alcoholism. The bill allows people who successfully go through a treatment program to get back into treatment if necessary. This bill strikes a balance between holding offenders accountable and not clogging the system. It is important to give offenders day-for-day credit for voluntary

installations of IIDs. That encourages people to install the devices on their cars right after the arrest. Drugged driving is more difficult to prosecute and often more complicated. There should be a requirement for a drug test when there has been a significant accident.

(With concerns) The deferred prosecution limit of once per lifetime was enacted in 2004 and increasing that option to twice is a step backward. The option should be limited to once every 10 years. People should not be able to manipulate the system. Violence is inherent in every drunk driving incident. The focus should be on protecting the public, not treating the offender. Requiring IIDs for negligent driving and recklessness is not appropriate because not all of those are related to impaired driving. Current law already allows the prosecutor to ask for the installation and allows courts to require it in those cases. Indigent defendants cannot afford to get these devices. Adding an IID requirement to those convictions will increase the number of cases that end up going to trial.

(Opposed) None.

Staff Summary of Public Testimony (Transportation):

(In support) The Impaired Driving Work Group has been working together and includes a variety of stakeholders. The work group developed the Ignition Interlock License Program. Of the 40,000 DUI arrests a year, almost 9,000 result in a negligent driving conviction. These individuals receive a fine, but there is no other accountability for such convictions—no jail time, no IID requirement, and no alcohol monitoring. The IID is a way to hold drivers accountable. The bill requires those convicted of negligent driving under the influence of alcohol to use the devices and increases accountability.

(With concerns) Requiring IIDs for negligent and reckless driving will clog local courts and drive costs to local governments. Furthermore, the bill changes conditions of existing agreements and adds burdens to local court systems.

(Opposed) None.

Persons Testifying (Judiciary): (In support) Representative Goodman, prime sponsor; Steve Lindemann; Allyn Lindemann; James Evens, Gordon Thomas Honeywell; Moses Garcia, Steve Luce, and Rob Riechert, Washington State Patrol; and Steve Lind, Washington Traffic Safety Commission.

(With concerns) Patricia Fulton, Washington Association of Criminal Defense Lawyers and Washington Defenders Association; and Russ Hauge, Kitsap County Prosecuting Attorneys and Washington Association of Prosecuting Attorneys.

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

(With concerns) Bob Cooper, Washington Defender Association and Washington Association of Criminal Defense Lawyers.

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

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