

# HOUSE BILL REPORT

## E2SHB 1789

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### As Amended by the Senate

**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.

#### **Brief Summary of Engrossed Second Substitute Bill**

- Increases the mandatory minimum jail terms for first-time driving under the influence (DUI) offenders and requires the offender to pay for the cost of incarceration.
- Requires a person convicted of reckless driving or negligent driving in the first degree to install an ignition interlock device, under certain circumstances.
- Changes the definition of "prior offenses," expands the felony DUI law, and makes other changes to the statutes regarding alcohol-related traffic offenses.

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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; Shea,

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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.*

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).

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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 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:**

#### Mandatory Minimum Penalties for DUI.

A person commits driving under the influence of intoxicating liquor or any drug (DUI) in two ways:

- if the person drives a vehicle and has, within two hours of driving, a blood or breath alcohol concentration (BAC) of .08 or higher (per se violation); or
- if the person drives and is under the influence of or affected by intoxicating liquor or any drug (actual impairment).

The misdemeanor 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 BAC for the current offense. For an offender who has no prior offenses, the minimum time in jail is:

- One day in jail or 15 days of electronic monitoring if the offender's BAC is under 0.15 or there is no BAC for reasons other than refusal.
- Two days in jail or 30 days of electronic monitoring if the offender's BAC is 0.15 or higher or the offender refused BAC test.

The DUI statutes require the offender to pay the costs of electronic home monitoring. Another statute that applies to criminal procedures in general, allows the court to impose costs on a convicted defendant. Costs can include the cost of incarceration, capped at \$100 per day for incarceration. The statute provides that other court-ordered legal financial obligations take precedence over the payment of costs of incarceration.

### 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.

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

#### Mandatory Minimum Penalties.

The mandatory minimum jail sentence for a first-time DUI offender is increased. For an offender with a BAC of less than 0.15 (or if there was no BAC for reasons other than refusal), the mandatory minimum jail term is three days, rather than one day. For an offender with a BAC of 0.15 or higher (or if the offender refused to take the BAC test), the mandatory minimum jail term is one week, rather than two days. The offender must pay the cost of incarceration.

#### 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, as defined in the DUI statutes. A person convicted of reckless driving who has a prior offense 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.

#### 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.

#### **EFFECT OF SENATE AMENDMENT(S):**

The Senate amendment added provisions on DUI courts and victim impact panels and increased the monetary penalty for certain convictions from \$125 to \$200 (SHB 1167). The Senate amendment also removed the provisions that increased the mandatory minimum jail time for first-time DUI offenders (SHB 1556).

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes 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.