

# HOUSE BILL REPORT

## HB 2728

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**As Reported by House Committee On:**  
Public Safety

**Title:** An act relating to impaired driving.

**Brief Description:** Concerning impaired driving.

**Sponsors:** Representatives Goodman, Klippert, Smith, Morrell, Gregerson and Freeman.

**Brief History:**

**Committee Activity:**

Public Safety: 2/4/14, 2/5/14 [DPS].

**Brief Summary of Substitute Bill**

- Clarifies that when a repeat offender is arrested for a Driving Under the Influence (DUI) offense, that person must be held in jail and cannot be released from custody except by a judicial officer.
- Requires the court to notify the Department of Licensing (DOL) when an ignition interlock device (IID) restriction is imposed on a defendant and when such restriction is lifted.
- Requires the DOL to make or remove a notation on a defendant's driving record once it is notified by the court about the status of a defendant's IID restriction.
- Clarifies that it is a gross misdemeanor offense for a DUI offender to request a third party to blow or otherwise exhale into an IID in order to enable him or her to circumvent the device.
- Clarifies and makes technical amendments to the statutes that prohibit law enforcement officers from drawing blood from a person suspected of DUI without consent, a warrant, or exigent circumstances.

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**HOUSE COMMITTEE ON PUBLIC SAFETY**

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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.*

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Goodman, Chair; Roberts, Vice Chair; Klippert, Ranking Minority Member; Appleton, Holy, Hope, Moscoso, Pettigrew, Ross and Takko.

**Staff:** Yvonne Walker (786-7841).

**Background:**

In 2013 Engrossed Second Substitute Senate Bill 5912 (E2SSB 5912) (Chapter 35, Laws of 2013) was enacted that made numerous clarifications and sentencing enhancements to the impaired driving statutes including clarifying the Sentencing Reform Act scoring provisions, imposing mandatory sentences, adjusting statutorily imposed fines, expanding the list of aggravating circumstances, requiring alcohol assessments and treatment, and amending statutory provisions relating to ignition interlock devices (IID), electronic home monitoring devices, and commercial driver license restrictions.

Generally, a person can commit Driving Under the Influence (DUI) or being in Physical Control (PC) of a motor vehicle Under the Influence of intoxicating liquor or any drug if the person drives with a blood or breath alcohol concentration (BAC) of 0.08 or higher, under the influence of, or affected by liquor or any drug. A DUI/PC offense is punishable as a gross misdemeanor. It becomes a class C felony if a person has four or more prior offenses within 10 years.

Mandatory Arrest and Holding.

A police officer must arrest and take into custody, pending release on bail, personal recognizance, or court order, a person without warrant when the officer has probable cause to believe that the person violated the DUI or PC laws and has a prior offence for DUI or PC within 10 years. That person is to be held in jail until seen by a judge.

Ignition Interlocks.

As a condition of release from custody before arraignment or trial, a defendant who has a prior DUI, PC, vehicular homicide, or vehicular assault offense must be ordered to have a functioning IID installed on his or her vehicle with proof filed with the court within five business days of the date of release, or comply with the 24/7 Sobriety Program, or both. A court must authorize the removal of the IID upon acquittal or dismissal of charges.

Ignition Interlock License.

Washington's implied consent law provides for the revocation of a licensee's driver's license where the licensee is arrested for DUI and refuses to submit to a blood or breath alcohol test. Following a license revocation, the licensee can apply for an ignition interlock driver's license (IIDL), which allows the licensee to lawfully operate a vehicle during the revocation. However, the IIDL statute precludes a licensee who obtains an IIDL from thereafter asserting the statutory right to judicial appeal from the administrative decision imposing the revocation. The Washington State Court of Appeals ruled (in *Nielsen v. Department of Licensing*) that the statute that requires a driver to waive his or her right to appeal a license suspension or revocation order from the DOL in order to receive an IIDL is unconstitutional. Pursuant to the court decision, if a driver has been subject to an erroneous license suspension

or revocation, he or she can now appeal this ruling as well as be able to continue driving during the appeal process for the suspension or revocation.

#### Tampering With an Ignition Interlock Device.

If a person is restricted to driving only with an IID, it is a gross misdemeanor offense for that person to tamper with the device, or to request a third party to tamper with the device, in order to circumvent the device.

#### Implied Consent.

Under the implied consent laws, a driver is presumed to have given consent to a BAC test if the driver is arrested for DUI. As such, any person who operates a vehicle in Washington is deemed to have given consent to a test of his or her breath for the purposes of determining the alcohol concentration, tetrahydrocannabinol (THC) concentration, or presence of any drug. However, presently THC and other drugs cannot be measured or tested with a breath test.

The Fourth Amendment prohibits unreasonable search and seizures. A blood draw is a search, however, a blood draw is only constitutional when it is consensual, pursuant to a search warrant, or in exigent circumstances. In the *Missouri v. McNeely* case, the United States Supreme Court found that taking a person's blood without warrant violates a person's Fourth Amendment right and the exigency exception to the warrant requirement generally does not apply in these cases (since metabolization of alcohol in the body does not by itself create an exigent circumstance). As a result, routine blood draws from a person suspected of DUI without consent or a warrant are unconstitutional, unless there is some special complicating factor to justify exigency.

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

#### Mandatory Arrest and Holding.

A provision is added to make it explicitly clear that when a person is arrested and taken into custody for a violation and the officer has knowledge that the person has had prior DUI convictions in the previous 10 years, he or she must not be released from custody except by a judicial officer.

#### Ignition Interlocks.

In instances where a defendant is required to have a functioning IID installed on his or her vehicle as a condition of release, the court must immediately notify the Department of Licensing (DOL) when the IID restriction is imposed as a condition of release. The DOL subsequently must add a notation to the person's driving record noting the restriction. Once the IID restriction is lifted, the court must immediately notify the DOL regarding the lifting of the restriction and the DOL must immediately release any notation on the person's driving record relating to the IID restriction.

In an instance when an IID restriction imposed as a condition of release is cancelled, the court must provide a defendant with a written order confirming release of the restriction. The written order must serve as proof of release of the restriction until which time the DOL

updates the driving record. A person with an ignition interlock restriction imposed post-trial and subsequently released from such restriction cannot be held criminally liable because of an outdated driving record.

Ignition Interlock License.

As a result of the *Nielsen v. Department of Licensing* decision, the statutory provisions that prohibited a licensee from appealing an administrative decision imposing a license revocation is eliminated. A driver who has been subject to an erroneous license suspension or revocation may appeal this ruling and has the authority to continue driving during the appeal process.

Tampering With an Ignition Interlock Device.

If a person is restricted to driving only with an IID, it is a gross misdemeanor offense for that person to direct, authorize, or request another person to blow or otherwise exhale into the IID in order to circumvent the device.

Implied Consent.

When an arresting officer has reasonable grounds to believe a person has been driving or was in actual physical control of a (commercial or noncommercial) motor vehicle while under the influence of intoxication liquor or drugs, the arresting officer may only require that a breath or blood test be administered pursuant to a search warrant, a valid waiver of the warrant requirement, or when exigent circumstances exist. In addition, references to the testing of a person's breath for purposes of determining the THC concentration or the presence of any drugs are removed from the Implied Consent statute.

Technical Amendments.

Other technical corrections and clarifications are made to the impaired driving statutory provisions enacted in 2013 in E2SSB 5912.

**Substitute Bill Compared to Original Bill:**

Several provisions are clarified that:

- makes it clear that a repeat DUI offender may not be released before a preliminary hearing;
- a person with an ignition interlock restriction imposed post-trial and subsequently removed is not criminally liable because of an outdated driving record;
- requires that when an IID restriction imposed as a condition of release is cancelled, the court must provide a defendant with a written order confirming release of the restriction; and
- a written order serves as proof of release of the IID restriction until which time the DOL updates the driving record.

The provisions that moved funds from one agency to another for 24/7 Sobriety programming and for increased jail costs are removed.

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**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) This bill is the result of some fixes to Senate Bill 5912 that were recommended by the Impaired Driving Work Group (work group) that met over the interim. It makes sure that the funding is in the right agencies and that the courts and the DOL are communicating adequately. Senate Bill 5912 required that arrested repeat DUI offenders were to go to jail and be held until they saw a judge. But there are a number of jails that have been releasing offenders. This bill adds a provision to make it explicitly clear that offenders cannot be released from jail until they see that judge. This bill does not cost anything. This bill is important to make a number of technical and substantive fixes.

Originally when a defendant was acquitted in court and an IID restriction was lifted, his or her DOL records would not reflect that change. The time period between when the IID is lifted and when the DOL updates its records puts a group of innocent people at risk for being in violation of an IID order. That issue has been fixed in this substitute bill. Judges would be required to give the offender a piece of paper showing that the IID restriction has been lifted.

(In support with concerns) There are two technical amendments that are recommended for clarification purposes. Otherwise this bill also fixes the DUI statute to make it consistent with the *McNeely* decision and it fixes language that originally stated that police had to inform a person that his or her breath test will test for THC when that is not possible.

(With concerns) The work group is complimented for operating in a public fashion. However, the work group is heavily weighed with law enforcement and the ignition interlock community. More members of the general community should be included in the work group. The requirements for mandatory arrest and IID requirements in the statute do nothing for people that are arrested for marijuana.

(Opposed) The law needs to be changed that requires persons arrested for marijuana use to have an IID installed. The community would like to work with members and the Legislature to see how that law can be changed in the future.

**Persons Testifying:** (In support) Representative Goodman, prime sponsor; Amy Freedheim, King County Prosecuting Attorney's Office; Steve Lind, Washington Traffic Safety Commission; and Don Pierce, Washington Sheriffs and Police Chiefs.

(In support with concerns) Patricia Fulton, Washington Association of Criminal Defense Lawyers and Washington Defender Association.

(With concerns) Arthur West.

(Opposed) Steve Sarich, Cannabis Action Coalition.

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