

# HOUSE BILL REPORT

## ESSB 6204

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### As Passed House - Amended:

March 1, 1996

**Title:** An act relating to penalties for driving without a driver's license and negligent driving.

**Brief Description:** Redefining negligent driving.

**Sponsors:** Senate Committee on Law & Justice (originally sponsored by Senators Haugen, Smith, Winsley, Hale and Schow).

### Brief History:

#### Committee Activity:

Law & Justice: 2/21/96, 2/23/96 [DPA].

#### Floor Activity:

Passed House - Amended: 3/1/96, 94-0.

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## HOUSE COMMITTEE ON LAW & JUSTICE

**Majority Report:** Do pass as amended. Signed by 15 members: Representatives Sheahan, Chairman; Delvin, Vice Chairman; Hickel, Vice Chairman; Dellwo, Ranking Minority Member; Costa, Assistant Ranking Minority Member; Carrell; Chappell; Cody; Lambert; McMahan; Morris; Robertson; Smith; Sterk and Veloria.

**Staff:** Bill Perry (786-7123).

### Background:

Negligent Driving. Negligent driving is defined as operating a motor vehicle in a manner that endangers or is likely to endanger a person or property. Negligent driving is a misdemeanor punishable by a maximum fine of \$250. No jail sentence may be imposed, and conviction does not result in loss of driving privileges. A person charged with negligent driving is entitled to a jury trial because it is a crime. However, because negligent driving is not punishable by incarceration, an indigent defendant is not entitled to a public defender. Under court rules, local courts may allow bail forfeiture to constitute final disposition of a negligent driving charge. However, court rules prohibit issuance of a bench warrant for the arrest of a person who fails to appear on a negligent driving charge because the offense does not involve the possibility of jail time.

Negligent driving is a lesser included offense to the crime of reckless driving. Reckless driving consists of driving "in willful or wanton disregard for the safety of persons or property." Reckless driving is gross misdemeanor and also carries a 30 day license suspension. A jury or court considering a charge of reckless driving may convict the defendant instead of the lesser charge of negligent driving because all the elements of negligent driving are contained in the crime of reckless driving.

Drunk driving (DUI) is committed in either of two ways. A person is guilty of DUI if he or she drives with a breath or blood alcohol concentration of 0.10 or more. A person is also guilty of DUI if he or she drives while "under the influence of or affected by" alcohol or drugs. The courts have held that being under the influence of or affected by means a person's ability to drive is impaired to some appreciable degree. DUI is a gross misdemeanor that carries mandatory jail time, fines, and loss of driving privileges.

For a variety of reasons, an initial charge of reckless or drunk driving may be reduced to a charge of negligent driving.

No Valid Operator's License. Under current law, driving without a valid driver's license is a misdemeanor, punishable by up to 90 days in jail and a \$1,000 fine. Under the same statute, driving without a valid driver's license is a lesser included offense within the offenses of driving while a license is suspended or revoked, and operating a motor vehicle under another license or permit while the driver's license is suspended or revoked.

The Office of the Administrator for the Courts estimates that 20 percent of all traffic misdemeanors filed in courts of limited jurisdiction are for violations of this statute. Courts routinely allow defendants to forfeit bail and serve no jail time, and courts impose no fines, if the defendants show proof of obtaining valid drivers' licenses prior to adjudication. The amount of the bail forfeited usually is around \$150.

A traffic infraction is not a criminal offense. Unless otherwise provided, the maximum monetary penalty for a traffic infraction is \$250.

### **Summary of Bill:**

Negligent Driving. Negligent driving is divided into two degrees.

The crime of negligent driving in the first degree is created. It is defined as operating a motor vehicle in a negligent manner and exhibiting the effects of having consumed liquor or illegal drugs. It is a misdemeanor punishable by up to 90 days in jail and a \$1,000 fine. Exhibiting the effects of alcohol means the driver shows such effects in his or her speech, manner, appearance, behavior, or coordination or has the odor of alcohol on his or her breath, and there is some other evidence of recent consumption.

Exhibiting the effects of drugs means there is an effect on the driver's speech, manner, appearance, behavior, or coordination and there is other evidence of possession of drugs or of recent consumption. An affirmative defense is created for a person who has consumed drugs pursuant to a valid prescription.

The current crime of negligent driving is renamed negligent driving in the second degree and is made a traffic infraction. The infraction is punishable by a fine of \$250. Driving on private property in a manner consistent with the permission of the owner remains an affirmative defense to this charge.

Negligent driving is no longer a lesser included crime of reckless driving. Any act constituting negligent driving that also constitutes another crime may be prosecuted as that other crime.

In some cases, a conviction or a deferred prosecution for first degree negligent driving counts as a prior offense for purposes of enhancing a sentence for a subsequent DUI conviction. This rule applies only if the conviction or deferral for negligent driving is the result of a reduced original charge of DUI, vehicular assault, or vehicular homicide.

A first conviction for first-degree negligent driving will not appear on the driving record that is available to insurance companies. However, a second conviction within five years will result in both convictions being available.

The Office of the Administrator for the Courts is to report to the Legislature by October 1, 1998, on negligent driving arrests, charges, and convictions and on the reduction of charges to negligent driving from other offenses.

No Valid Operator's License. The crime of driving without a valid license is reduced to an infraction if the driver produces acceptable identification or an expired license. The fine for this infraction is \$250, except the fine will be reduced to \$50 if the driver obtains a valid license.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** Dividing negligent driving into two degrees will lower judicial and law enforcement costs and will streamline the processing of cases. The current law is an irrational mix of criminal and non-criminal provisions.

**Testimony Against:** None.

**Testified:** Senator Mary Margaret Haugen, prime sponsor; Judge Kip Stilz, Washington State District and Municipal Court Judges Association (pro); Judge Ronald Kessler, Acting Presiding Judge, Seattle Municipal Court (pro); and Steve Lindstrom, Alcohol and Substance Abuse Association and Washington Association of Outpatient Practitioners (pro).