

SENATE BILL REPORT

SSB 5141

As Passed Senate, March 9, 1995

Title: An act relating to offenses involving alcohol or drugs.

Brief Description: Revising provisions relating to offenses involving alcohol or drugs.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Smith, Rasmussen, Quigley, C. Anderson and Bauer).

Brief History:

Committee Activity: Law & Justice: 1/12/95, 1/30/95, 2/15/95 [DPS].
Passed Senate, 3/9/95, 46-0.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5141 be substituted therefor, and the substitute bill do pass.

Signed by Senators Smith, Chair; C. Anderson, Vice Chair; Hargrove, Haugen, Johnson, Long, McCaslin, Quigley and Roach.

Staff: Lidia Mori (786-7755)

Background: Significant changes were made to the laws governing driving under the influence (DUI) during the 1994 legislative session. Concern has since been expressed that the laws are complicated and onerous to enforce. Recent court rulings have provided direction and impetus to revise the statutes.

The blood or breath alcohol concentration (BAC) at which a person is guilty of driving while under the influence of liquor or drugs is .10 in Washington. Eleven states and 21 Washington cities have reduced this standard to .08.

Last year Washington adopted administrative license suspension or revocation procedures that apply to second or subsequent DUI arrests and to minors with a blood or breath alcohol concentration of .02 or higher. Thirty-seven states and the District of Columbia have adopted administrative license suspension or revocation procedures.

Summary of Bill: The blood or breath alcohol concentration at which a person is guilty of driving while under the influence of liquor or drugs is lowered from .10 to .08.

A person convicted of DUI will be punished by imprisonment for one day to one year, a fine of \$350 to \$5000, and suspension of his or her driver's license for 90 days. A second DUI conviction is punished by imprisonment for 30 days to one year, a fine of \$500 to \$5000, and revocation of the driver's license for one year. A third DUI conviction requires imprisonment for 90 days to one year, a fine of \$750 to \$5000, and revocation of the offender's driver's license for two years. The judge need not impose the mandatory

minimum sentence if the judge makes a finding that the minimum term is clearly excessive and there are substantial and compelling reasons that justify a lesser sentence.

In sentencing DUI offenders, the court is directed to consider as aggravating factors whether the offender's alcohol concentration was .15 or more, refusal to submit to a breathalyzer test, whether the offender's license was suspended, revoked, denied, or in probationary status, and lack of liability insurance.

A person who is under 21 years of age, drives a motor vehicle after consuming alcohol is guilty of driving after consumption of alcohol which is a misdemeanor.

Administrative license suspension or revocation procedures apply when a person is arrested for a DUI offense or is under 21 and is arrested for driving after consumption of alcohol and refuses to submit to a breathalyzer test or the breathalyzer test is administered and shows an alcohol concentration of .08 or more or .02 or more if the person is under the age of 21. The Department of Licensing suspends or revokes the person's license effective 45 days from the date of the arrest or when the suspension or revocation is sustained at a hearing, whichever occurs first. If the person petitions the court for a deferred prosecution within 45 days of arrest and documents that the recommended treatment has commenced or is scheduled to commence, the court may direct the Department of Licensing to extend the period of the temporary license for an additional 30 days. The court imposes one or more conditions on any extension.

The first DUI incident or driving after consumption of alcohol in which the driver has a BAC of .08 or more or a BAC of .02 or more if the driver is under 21 results in suspension for 90 days. The first refusal to submit to a breathalyzer test results in revocation for one year. The second DUI or driving after consumption of alcohol incident within five years in which the BAC is .08 or more or .02 or more if the driver is under 21 results in revocation for one year. For the second breathalyzer refusal in five years, the revocation period is two years. The third DUI incident in five years in which the BAC is .08 or more or .02 or more if the driver is under age 21 results in revocation for two years. The third breathalyzer refusal in five years results in revocation for three years. The suspension or revocation imposed by the department is stayed if the person is accepted for deferred prosecution unless the revocation is for refusal to submit to a breathalyzer test.

A person who is arrested for DUI, receives the warnings required by statute, and knowingly refuses to submit to a breathalyzer test is guilty of refusal to submit to a breath alcohol test, which is a gross misdemeanor. The penalty for the first conviction of refusal to submit to a breath alcohol test is license suspension for 90 days. The second conviction in five years for refusal to submit to a breath alcohol test results in license revocation for one year. The third conviction in five years results in revocation for two years. The period of suspension or revocation imposed for refusal to take a breath alcohol test is reduced by the length of the period of suspension or revocation imposed under administrative licenses suspension or revocation procedures.

A person must complete alcohol information school or any recommended treatment in order to have his or her driving privilege reinstated after it is suspended or revoked due to administrative license sanctions or conviction of DUI.

If a person's license has been suspended or revoked due to a conviction for refusal to submit to a breathalyzer, a court conviction for violation of DUI laws, or administrative license sanctions, the license reissue fee is \$100.

The \$125 fee that is assessed to people that are convicted, sentenced to a lesser charge, or given deferred prosecution as a result of an arrest for DUI, vehicular homicide or vehicular assault is reauthorized.

Appropriation: None.

Fiscal Note: Available.

Effective Date: August 1, 1995, except for sections 1 through 3, 5 through 8, 12 through 14, 24, 27, 33, 35, 40, and 41 which take effect immediately.

Testimony For: Drunk driving is the biggest killer of Washington citizens. A big incentive for alcoholics to go through deferred prosecution is retention of the driver's license. Deferred prosecution should be made as available as possible. A statewide BAC standard of .08 is needed so there is not a patchwork of different standards. Studies show that operation of a motor vehicle is significantly impaired at the .08 blood alcohol level. A standard of .08 will result in less plea bargaining at the .10 level. This bill fixes many of the implementation problems in current DUI laws.

Testimony Against: A blood alcohol standard of .08 does not focus on the real problem which is repeat offenders and those who drive with high blood alcohol levels. There needs to be more due process in administrative license hearings. Allowing administrative hearings to be held telephonically negatively impacts the defendant. The bill should include a hearing fee waiver for indigent people who face administrative license sanctions.

Testified: Gene Andre, MADD (pro); Adam Kline, MADD (pro); Jim Bostad, MADD (pro); Patricia Stromberg (pro); Steve Olsen (pro); Siobham Whitney (pro); Elizabeth Durch (pro); Tom McBride, WA Assn. of Prosecuting Attorneys (pro); Steve Lind, WA Traffic Safety Commission (pro); Larry Fehr, WA Council on Crime and Delinquency (pro); Pam Osier, Runaway Alliance (pro); Norm Maleng, King County Prosecutor (pro); Jim Sweetser, Spokane County Prosecutor (pro); Mark Sidran, Seattle City Attorney (pro); Judge Robert McBeth, WA State District and Municipal Court Judges Assn. (pro in part); Judge McCarthy, WA State District and Municipal Court Judges Assn. (pro in part); Dave Chapman, WA Assn. of Criminal Defense Attorneys (con); Peggy Carey Bishop (con); David Law, Evergreen Legal Services (con); Linda Grant, Assn. of Alcoholism and Addictions Programs (con in part); Kurt Sharar, WA State Assn. of Counties; William Hawkins, WA Assn. of Prosecuting Attorneys (pro); Seth Dawson, WA Assn. of Prosecuting Attorneys (pro); Steve Lindstrom, WSAIOP and AAP (pro); Gregory Hazard, Restaurant Assn. (con in part); Kathy Gerke, Assn. of Cities (pro); Clark Holloway, Dept. of Licensing; Heather Hamilton, Dept. of Licensing; Vito Chiechi, WA State Licensed Beverage Assn. (con); Celia Fritz, Anheuser-Busch (con); Mike Tretton (pro in part); Ken Stark, DSHS, ADASA (pro in part); Judge Ronald Kessler, Seattle Municipal Court.

House Amendment(s): Administrative Action. The requirement that an arresting officer must issue a temporary license is replaced with a provision that allows the officer to mark the license so that it will serve as a temporary 60-day license.

A person has 30 days from arrest to request a hearing before DOL. The hearing must be held 60 days from arrest if one is requested. A person requesting a hearing need not pay a fee; however, a \$100 fee is required to be paid to DOL if the person appeals the final order of the department.

Except in the case of a refusal to take a BAC test, a person's temporary driving privileges may be extended by up to 90 days if the person petitions for a deferred prosecution of criminal charges arising out of the same incident. Except for refusal cases, obtaining a deferred prosecution will stay the administrative suspension or revocation.

Implied Consent Law Refusals. The first refusal to submit to a breathalyzer test results in revocation of the person's driver's license for one year. A second refusal within five years, or a first refusal when there has been a drunk driving incident in the previous five years, results in revocation for two years or until age 21. Administrative revocations for refusals run consecutively to any criminal suspension or revocation.

BACs of 0.10 or More. The first DUI incident in which the driver has a BAC of .10 or more results in placement of the person's license in probationary status. A second violation within five years results in revocation of the person's driver's license for two years.

Persons Under 21 Years of Age with BACs of .02 or More. The first incident in which a person under 21 years of age has a BAC of .02 or more results in suspension of the driver's license for 90 days. A second or subsequent violation within five years causes revocation of the driver's license for one year or until age 21, whichever is longer.

Criminal Penalties. The amendment retains the current law regarding enhancement of penalties for higher BAC levels except for mandatory minimums for second DUI violations. For a second DUI when the BAC is less than .15 or is not available due to reasons other than refusal to take the test, the mandatory minimum is 30 days imprisonment, a fine of \$500 and a one year license revocation. If the BAC is at least .15 or is not available due to the person's refusal to take the test, the mandatory minimum is 45 days imprisonment, a fine of \$750, and a 450 day license revocation.

Plea Bargaining. The prosecuting attorney or city attorney is prohibited from reducing or amending a charge of DUI to any equivalent or lesser criminal offense after the citation or complaint has been filed.