

HOUSE BILL ANALYSIS

HB 2608

Title: An act relating to driving under the influence.

Brief Description: Strengthening DUI laws.

Sponsors: Representatives O'Brien, Ballasiotes, Radcliff, Benson, Scott, D. Sommers, Carlson, Costa and Dyer.

HOUSE COMMITTEE ON LAW & JUSTICE

Staff: Bill Perry (786-7123).

Background: A variety of procedural and substantive provisions relate to the state's driving while under the influence (DUI) laws.

BAC Levels.

It is possible to commit DUI in either of two ways. First, a person can commit DUI by driving while impaired. A conviction for this offense requires showing that alcohol or drugs impaired the driver's ability to some appreciable degree. The second way a person commits DUI is by driving with more than a certain blood or breath alcohol concentration (BAC). Driving with a BAC that is too high is a "per se" violation of the DUI law. A per se violation requires only the presence of the required BAC level. It does not require proof that the driver's ability was impaired.

The current BAC level for a per se violation of the DUI law is "0.10". This number is the measurement of a person's alcohol concentration either in terms of grams of alcohol per 210 liters of the person's breath, or in terms of percent by weight of alcohol in the person's blood. The numbers produced by blood or breath testing using these scales are taken as equivalent of each other in measuring a person's alcohol concentration.

Deferred Prosecution.

Any person charged with a non-felony offense in district court may petition for what's called a "deferred prosecution." DUI is the offense for which a deferred prosecution is most often sought. In order to qualify for a deferred prosecution, a person must allege that the charged criminal conduct resulted from the person's alcoholism or drug addiction, that the conduct is likely to recur if the alcoholism or addiction is not

treated, and that the alcoholism or addiction is in fact amenable to treatment. Among other things, the applicant must also acknowledge in writing that he or she waives the right to testify, to call witnesses, to have a speedy trial, or to have a jury. The applicant must also stipulate to the admissibility of the evidence contained in the police report.

If a person is granted a deferred prosecution and successfully completes a court-ordered, two-year treatment program, the court will dismiss the charges.

A person charged with an offense under the motor vehicle code is not eligible for a deferred prosecution more than once in a five-year period.

Ignition Interlocks.

Under legislation enacted in 1994, courts have explicit authority to order that ignition interlocks or other devices be installed on the cars of certain drivers. Included among such drivers are those who are convicted of, or granted a deferred prosecution on, a charge of drunk driving (DUI).

Ignition interlock devices are alcohol analyzing devices designed to prevent a person with alcohol in his or her system from starting or driving a car. Other biological or technical- devices may be installed for the same purpose. If a court orders the installation of one of these devices, the Department of Licensing (DOL) is to mark the person's driver's license indicating that the person is allowed to operate a car only if it is equipped with such a device.

DUI Penalties.

DUI is a gross misdemeanor crime, which means that the maximum penalty is a fine of \$5,000 and imprisonment for one year. However, the DUI law also contains mandatory minimum jail and fine provisions, as well as mandatory loss of driver's license provisions. These mandatory penalty provisions escalate with both the number of prior offenses and with the level of BAC in the current offense. For instance, for a first-time offender with a BAC of less than 0.15, the minimum fine is \$350, the minimum jail sentence is one day, and the license loss is 90 days. For a first-time offender with a BAC of 0.15 or more, the fine is \$500, the jail sentence is two days, and the license loss is one year.

Vehicular Homicide.

Vehicular homicide is a class A felony. It involves causing the death of another while driving either under the influence or while driving recklessly or with disregard for the safety of others. Under the Sentencing Reform Act (SRA), vehicular homicide is a level VII offense if committed while driving with disregard, a level VIII offense if

committed while driving recklessly, and a level IX offense if committed while driving under the influence. The midpoint of the presumptive sentence range for a first-time offender for a level IX offense is three years in prison. The presumptive sentence range increases with the offender's criminal history. Various rules apply in determining an offender's criminal history score. Whether or not a prior conviction counts depends on the nature of the prior offense, the nature of the current offense, and the number of years since the prior conviction. As a class A felony, vehicular homicide never washes out of an offender's criminal history. If an offender's current crime is a felony traffic offense, such as vehicular homicide, then a prior vehicular homicide counts double in determining the offender score. Also, if the current offense is a felony traffic offense, some non-felony prior traffic offenses count as well. These non-felony priors are called "serious traffic offenses" and include: DUI, reckless driving, and hit-and-run involving an attended vehicle.

Alcohol Assessment and Treatment.

A person convicted of DUI is required either to complete a course in an alcohol information school or to complete a more intensive treatment program, as determined by the court.

Summary of Bill:

BAC Level.

The BAC level for a per se DUI violation is lowered from 0.10 to 0.08.

Deferred Prosecution.

A person may be granted a deferred prosecution only once in a lifetime on a DUI-related charge.

Ignition Interlocks.

For all but first-time DUI offenders, courts must order the convicted person to drive only a vehicle equipped with an interlock device for at least five years. The interlock requirement remains an optional sentence for first-time offenders. Any offender ordered to install an interlock is placed under the supervision of the DOL. If the department detects evidence of tampering with the device, or determines that the offender has violated the restrictions imposed, the department is to immediately suspend the offender's driver's license. Any law enforcement officer citing a driver for operating a vehicle in violation of an interlock requirement is to notify the department within 24 hours.

DUI Penalties.

The mandatory penalties for repeat DUI offenders are increased.

For a second-time offender with BAC below 0.15:

- o the fine is increased from \$500 to \$1,000; and
- o the license revocation is increased from two years to five years.

For a second-time offender with a BAC of 0.15 or more:

- o the jail time is increased from 45 to 90 days;
- o the fine is increased from \$750 to \$1,500; and
- o the license revocation is increased from 900 days to five years.

For a third-time offender with a BAC below 0.15:

- o the jail time is increased from 90 days to six months;
- o the fine is increased from \$1,000 to \$5,000; and
- o the license revocation is increased from three years to lifetime.

For a third-time offender with a BAC of 0.15 or more:

- o the jail time is increased from 120 days to six months;
- o the fine is increased from \$1,500 to \$5,000; and
- o the license revocation is increased from four years to lifetime.

Vehicular Homicide.

A mandatory minimum prison term of five years is imposed for DUI-related vehicular homicide.

Alcohol Assessment and Treatment.

Persons who are convicted of alcohol related offenses but who are not being required to undergo alcoholism treatment, are required to complete an alcohol information course approved by the Department of Social and Health Services.

NOTE: There is ambiguity in the bill regarding the interaction of DUI sentencing provisions related to revocation of a driver's license and requirement of an interlock. The amendments to RCW 46.61.5055 seem to require installation of an interlock (see, e.g., page 7, lines 14 through 17) on the car of a person whose license is revoked (see, e.g., page 7, line 7 through 9), and for exactly the same period of time as the revocation. These provisions may imply an intent that a person with a revoked license be allowed nonetheless to drive, as long as an interlock is in place. On the other

hand, however, the bill requires that interlocks be ordered only after the period of revocation is over (see page 2, line 12).

Fiscal Note: Not requested.

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

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