

SENATE BILL REPORT

SSB 5732

As Amended by House, April 14, 2009

Title: An act relating to traffic infractions for drivers whose licenses or privileges are suspended or revoked.

Brief Description: Concerning traffic infractions for drivers whose licenses or privileges are suspended or revoked.

Sponsors: Senate Committee on Judiciary (originally sponsored by Senators Kline, McCaslin, Regala and Hargrove).

Brief History:

Committee Activity: Judiciary: 2/11/09, 2/25/09 [DPS].

Passed Senate: 3/07/09, 32-13.

Passed House: 4/14/09, 60-36.

SENATE COMMITTEE ON JUDICIARY

Majority Report: That Substitute Senate Bill No. 5732 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kline, Chair; Regala, Vice Chair; Carrell, Hargrove, Kohl-Welles, Roach and Tom.

Staff: Lidia Mori (786-7755)

Background: It is unlawful for any person to drive a motor vehicle in this state while that person's privilege to drive is suspended or revoked. Persons can have their drivers' license suspended for failure to respond to a notice of a traffic infraction or for failure to appear at a requested hearing for a traffic infraction. In Washington, there are approximately 102,000 cases of driving with license suspended in the third degree (DWLS 3) filed annually and approximately 45,000 convictions for this offense.

DWLS 3 is a misdemeanor and it can be committed under a variety of circumstances. A person commits DWLS 3 by driving a motor vehicle when the person's driver's license is suspended or revoked because the person has (1) failed to respond to a notice of traffic infraction; (2) failed to appear at a requested hearing; (3) violated a written promise to appear in court; or (4) failed to comply with the terms of a notice of traffic infraction or citation. There are also several other behaviors which constitute DWLS 3.

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.

The vast majority of courts of limited jurisdiction in Washington do not offer an option of a relicensing diversion program to people who are arrested and/or charged with DWLS 3. The Office of Public Defense conducted a recent survey of the district and municipal courts to determine how they deal with DWLS 3 cases. Approximately 17 percent of the courts that responded offer some sort of relicensing programs. The remainder of the courts handle the cases in the traditional way, with the involvement of a prosecutor, possibly a public defender, and the typical court procedures associated with a criminal case.

Current law directs the Department of Licensing to furnish a certified abstract of a person's driving record to the person named in the abstract. Currently, most courts of limited jurisdiction do not give a copy of a person's driver's abstract to the person named in the abstract.

Summary of Substitute Bill: When a person commits DWLS 3 due to failure to appear at a requested hearing or failure to respond or pay a traffic infraction, a court or prosecuting attorney will give a certified abstract of a person's driving record to the person named in the record, in addition to a list of the person's unpaid traffic offense-related fines and contact information for each jurisdiction or collection agency to which the money is owed. This is required in jurisdictions that do not have a relicensing diversion program. A fee of up to \$20 may be imposed by the court.

The superior courts or courts of limited jurisdiction are authorized to participate or provide relicensing diversion programs to persons who commit DWLS 3 due to failure to appear at a requested hearing or failure to respond or pay a traffic infraction in counties with a population of less than 30,000 or cities with a population of less than 20,000. Eligibility is limited to violators with not more than four warrants for failure to appear in the last ten years, subject to a less restrictive rule imposed by the presiding judge of the county district court or municipal court, or no more than four violations in the last ten years of DWLS 3 for failure to appear or failure to pay in response to a traffic infraction. People subject to arrest under a warrant are not eligible for the diversion program. The diversion option may be offered at the discretion of the prosecuting attorney before charges are filed or by the court after charges are filed. Participants for whom charges are filed may be charged a fee of up to \$100 to support administration of the program. Counties with a population of 30,000 or more, or cities with a population of 20,000 or more, must participate or provide a relicensing diversion program to people who commit DWLS 3 due to failure to appear at a requested hearing or failure to respond or pay a traffic infraction. The same eligibility requirements and possible fee apply as in those counties or cities with optional relicensing diversion programs. A relicensing diversion program assists drivers with suspended or revoked licenses to regain their license and insurance and to pay their outstanding fines.

Counties and cities with relicensing diversion programs will annually provide the Administrative Office of the Courts (AOC) with information regarding eligibility criteria used for their programs, the number of participants, how many regain their drivers' licenses and insurance, and the total amount of fines collected. The costs of the programs and other information as determined by the office will also be provided. The information is analyzed by AOC and it will recommend a best practices model for relicensing diversion programs.

Appropriation: None.

Fiscal Note: Available.

[OFM requested ten-year cost projection pursuant to I-960.]

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: Driving while license suspended in the third degree (DWLS-3) cases are one third of the cases in courts of limited jurisdiction now. Case filings have soared. We spend 49 million to get 5 million. We have to do something about these cases. There should be a statewide agency task force to look at this problem, and make it a no cost task force. The Office of Public Defense supports making first offense of driving while license suspended an infraction instead of a misdemeanor. That would save the state about \$4 million. These cases involve poor people. They can't afford the fine but they keep driving to get to work. DWLS-3 should be diverted from the criminal justice system. These cases are extremely costly. If they are made infractions, there is no risk of loss of liberty so there's no need for appointment of a public defender.

OTHER: The Washington Traffic Safety Commission does not have a position on this bill. We are very concerned about the burden these cases have on the courts. Prosecutor time is taken away from more important cases like driving under the influence. A RAND study done in Seattle showed that the risk of a DWLS-3 driver being in a crash is the same as DWLS-1 and 2 drivers and a higher risk than properly licensed drivers. These people pose a great risk on the road. Prosecutors already do some sort of diversion. This bill doesn't simplify the DWLS law, it makes it more complex. The cop on the scene will have a hard time knowing whether the person he or she stops should be cited as an infraction or a misdemeanor. This is a critical point. The bill will save money in the short run but these people will reoffend and be back as misdemeanors. DWLS-3 should not be decriminalized, that hammer is needed. This bill would take the DWLS-3 cases off the plate of the public defender but it puts them on the infraction calendar, and that still takes the time of prosecutors. People get to these spots for a reason; they don't take the steps that they should whether it's due to their financial situation or just irresponsibility.

Persons Testifying: PRO: Joanne Moore, Office of Public Defense; Bob Cooper, Washington Association of Criminal Defense Lawyers, Washington Defender Association.

OTHER: Steve Lind, Washington Traffic Safety Commission; Denis Tracy, Whitman County Prosecuting Attorney; Heidi Ann Wachler, Association of Washington Cities; Jeff DeVere, Washington State Patrol.

House Amendment(s): Participation in or provision of relicensing diversion programs is voluntary for all counties and cities regardless of population, and the requirement that the driving record abstracts provided be certified is removed. The relicensing diversion program's eligibility limitation of no more than four warrants in ten years is replaced with an eligibility limitation of no more than four convictions in the ten years preceding the date of entering the relicensing diversion program. The requirement that the counties and cities provide information regarding

their relicensing diversion programs to the AOC and the requirement that the AOC analyze the data and develop a best practices model are made subject to available funds.