

# HOUSE BILL REPORT

## HB 3070

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### As Reported By House Committee On:

Law & Justice

Appropriations

**Title:** An act relating to penalties for driving under the influence.

**Brief Description:** Increasing penalties for drunk driving.

**Sponsors:** Representatives McCune and Mulliken.

### Brief History:

#### Committee Activity:

Law & Justice: 2/3/98, 2/5/98 [DPS];

Appropriations: 2/7/98 [DP2S(w/o sub LJ)].

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### HOUSE COMMITTEE ON LAW & JUSTICE

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Sheahan, Chairman; McDonald, Vice Chairman; Sterk, Vice Chairman; Costa, Ranking Minority Member; Constantine, Assistant Ranking Minority Member; Carrell; Cody; Kenney; Lambert; Lantz; Mulliken; Robertson and Sherstad.

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

**Background:** The driving under the influence (DUI) law has a variety of criminal and civil penalty provisions. These penalties escalate on the basis of repeat offenses and on the basis of the offender's blood or breath alcohol concentration (BAC). For purposes of counting "prior" DUIs, there is a five-year washout period. "Prior" offenses for purposes of these escalating penalties include: DUI; DUI-related vehicular homicide or assault; and negligent driving, if the conviction is the result of a charge originally filed as a DUI or vehicular homicide or assault. "Prior offenses" also include deferred prosecutions on DUI or DUI-related charges.

The implied consent law, the DUI vehicle forfeiture law, the occupational license law, and the deferred prosecution law also have provisions based on a five-year washout period for counting prior offenses.

The Department of Licensing (DOL) is required to keep DUI records for at least 10 years.

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 mid-point 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. Under the SRA, serious traffic offenses have a five-year washout period.

A provision outside of the DUI law makes it illegal for a minor to drive with an alcohol concentration (BAC) of 0.02 or more. The standard for DUI currently is 0.10.

**Summary of Substitute Bill:** All of the DUI-related, five-year washout periods are changed to 10-year periods, except for the periods applicable to deferred prosecutions, and to serious traffic offenses under the SRA. The DOL is required to keep DUI-related records permanently.

If a person is convicted of a DUI-related vehicular homicide, two years are added to the presumptive sentence range for each prior conviction for a prior offense as defined by the DUI law. Those prior offenses include: DUI; DUI-related vehicular homicide or assault; and negligent driving, if the conviction is the result of a charge originally filed as a DUI, or vehicular homicide or assault. "Prior offenses" also include deferred prosecutions on DUI or DUI-related charges.

The "minor 0.02" law is clarified to apply only to minors with BACs below the DUI level.

**Substitute Bill Compared to Original Bill:** The original bill eliminates the five-year washout periods completely. The substitute adds the provision related to the "minor 0.02" law.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Testimony For:** Serious DUI offenders can accumulate far too many offenses before sentence enhancements apply. This bill will hold serious repeat offenders more accountable.

**Testimony Against:** None.

**Testified:** Representative McCune, prime sponsor. Russ Hauge, Washington Association of Prosecuting Attorneys (pro)

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Law & Justice. Signed by 30 members: Representatives Huff, Chairman; Alexander, Vice Chairman; Clements, Vice Chairman; Wensman, Vice Chairman; H. Sommers, Ranking Minority Member; Doumit, Assistant Ranking Minority Member; Gombosky, Assistant Ranking Minority Member; Benson; Carlson; Chopp; Cody; Cooke; Crouse; Grant; Keiser; Kenney; Kessler; Lambert; Linville; Lisk; Mastin; McMorris; Parlette; Poulsen; Regala; D. Schmidt; Sehlin; Sheahan; Talcott and Tokuda.

**Staff:** Dave Johnson (786-7154).

**Summary of Recommendation of Committee on Appropriations Compared to Recommendation of Committee on Law & Justice:** The Department of Licensing would be required to retain DUI conviction records for 15 years rather than the permanent retention requirement contained in the substitute bill. The DOL is required to keep deferred prosecution records indefinitely rather than the 10-year requirement contained in the substitute bill. In addition, a new section was added which makes the bill null and void unless specific funding is provided in the Omnibus Appropriations Act.

**Appropriation:** None.

**Fiscal Note:** Requested on February 8, 1998.

**Effective Date:** Ninety days after adjournment of session in which bill is passed. However, the bill is null and void unless funded in the budget.

**Testimony For:** None.

**Testimony Against:** None.

**Testified:** None.