

HOUSE BILL REPORT

ESB 5790

As Reported by House Committee On:
Judiciary

Title: An act relating to vehicular assault.

Brief Description: Revising provisions relating to vehicular assault.

Sponsors: By Senators Kline, Costa, Shin, Sheahan, McCaslin, Deccio, Winsley and Constantine.

Brief History:

Committee Activity:

Judiciary: 3/29/01, 3/30/01 [DPA].

Brief Summary of Engrossed Bill
(As Amended by House Committee)

- Changes the causation and injury elements of the crime of vehicular assault and adds a new way in which the crime may be committed.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended. Signed by 10 members: Representatives Carrell, Republican Co-Chair; Lantz, Democratic Co-Chair; Hurst, Democratic Vice Chair; Lambert, Republican Vice Chair; Boldt, Casada, Dickerson, Esser, Lovick and McDermott.

Staff: Edie Adams (786-7180).

Background:

The crime of vehicular assault involves driving a vehicle in a reckless manner or while under the influence of drugs or alcohol and this conduct is the proximate cause of serious bodily injury to another person. "Serious bodily injury" is injury that involves a substantial risk of death, serious permanent disfigurement, or protracted loss or impairment of the function of any body part or organ.

Vehicular assault is a class B felony ranked at seriousness level IV under the Sentencing

Reform Act (SRA). This means that an adult offender with no prior criminal history would receive a standard range disposition of 3-9 months. Vehicular assault is included as a most serious offense under the "three-strikes law," which imposes a life sentence on an offender convicted of three most serious offenses.

Under the juvenile sentencing structure, vehicular assault is classified as a category C offense. A juvenile who commits a category C offense is subject to a standard range disposition of local sanctions, unless the offender has four or more prior adjudications, in which case the juvenile is subject to confinement at a state institution for 15-36 weeks. Local sanctions include up to 30 days of confinement, up to 12 months of community supervision, up to 150 hours of community service, and a fine of up to \$500.

The crime of vehicular assault requires that the reckless or drunk driving be the proximate cause of the injury. Proximate cause is a legal standard that consists of two components: cause in fact and legal or proximate causation. An act is generally not the proximate cause when a superseding, intervening event causes the injury.

Other driving-related offenses include reckless driving and negligent driving. Reckless driving is a gross misdemeanor and involves driving a vehicle in willful or wanton disregard for the safety of persons or property. Negligent driving involves operating a vehicle in a manner that is negligent and endangers a person or property. Negligent driving in the first degree also requires that the operator exhibit the effects of having consumed alcohol or drugs. First-degree negligent driving is a misdemeanor and second-degree negligent driving is a traffic infraction subject to a penalty of \$250.

Summary of Amended Bill:

The crime of vehicular assault is amended to change the causation and bodily injury elements and to create a new way that the crime is committed.

The causation element of vehicular assault is changed from proximate cause to actual cause, and the requirement that recklessness or driving under the influence is the cause of the injury is removed. In addition, the degree of injury that is required for vehicular assault is lowered from "serious bodily injury" to "substantial bodily harm." "Substantial bodily harm" means injury that involves a temporary but substantial disfigurement, a temporary but substantial loss or impairment of the function of any body part or organ, or a fracture of any body part.

A third way of committing the crime of vehicular assault is created. Vehicular assault is committed if a person operates or drives a vehicle with disregard for the safety of others and causes substantial bodily harm. Vehicular assault by driving with disregard for the safety of others is ranked at seriousness level III under the SRA.

The following definitions are amended to apply only to vehicular assault if committed while under the influence or by driving in a reckless manner: "serious offense" under the laws relating to firearms; "most serious offense" under the SRA; and "violent offense" under the SRA.

Amended Bill Compared to Engrossed Bill:

The engrossed bill renamed vehicular assault as first-degree vehicular assault and created the new crime of vehicular assault in the second degree by driving with criminal negligence and causing substantial bodily harm. The engrossed bill removed vehicular assault from the persistent offender law by removing it from the definition of "most serious offense."

Appropriation: None.

Fiscal Note: Available on original bill.

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

Testimony For: This bill addresses a gap in the law that does not allow prosecution in cases where a person seriously injures another person. The current recklessness standard of vehicular assault and the degree of injury required are too high. Creating the second-degree offense is a very important issue for bicyclists and pedestrians. The laws are not there to prosecute people who are careless and kill or seriously injure other people. Careless drivers must be held responsible for their actions and the injury and death they cause. The changes to the causation element and the bodily injury element are the most important aspects of this bill for prosecutors. The change to the causation prong brings the vehicular assault statute in line with the vehicular homicide statute. It is a very hard burden for the prosecutor to prove that the recklessness is what caused the injury. The serious bodily harm standard is too high and prevents prosecution in cases where serious injury occurs. The substantial bodily harm standard is not too broad; it is the standard used for second-degree assault.

Testimony Against: None.

Testified: (In support) Senator Kline, prime sponsor; Representative Pflug; Tom McBride and Amy Freedheim, Washington Association of Prosecuting Attorneys; Heike Werlinger; and Karen Bolin, Washington Road Riders Association.

(In support with amendment) Michael Temple, Bicycle Alliance of Washington.