
Judiciary Committee

HB 1451

Title: An act relating to driving or physical control of a vehicle while under the influence of intoxicating liquor or any drug.

Brief Description: Increasing penalties for driving or physical control while under the influence.

Sponsors: Representatives Ahern, O'Brien, Tom, Lovick, Roach, Walsh, Holmquist, Rodne, Orcutt, Kretz, Campbell, Strow, McCune, McDonald, Serben, Condotta, Williams, Chase, Hasegawa, Haler, Pettigrew, Newhouse, P. Sullivan, Morrell and Sells.

<p style="text-align: center;">Brief Summary of Bill</p> <ul style="list-style-type: none">• Makes a third conviction of DUI within seven years a class C felony.• Ranks felony DUI as a Level V offense under the Sentencing Reform Act.

Hearing Date: June 14, 2005.

Staff: Trudes Tango Hutcheson (786-7384).

Background:

DUI LAW. Drunk driving (DUI) is a gross misdemeanor. The maximum confinement sentence for a gross misdemeanor is one year in jail. The DUI law contains a complex system of mandatory minimum penalties that escalate based on the number of prior offenses and the concentration of alcohol (BAC) in the offender's blood or breath. The mandatory minimum jail sentences range from one day in jail (*or* 15 days of electronic home monitoring) for a first-time offender with a low BAC, to 120 days in jail (*and* 150 days of electronic home monitoring) for a third-time offender with a high BAC.

A "prior offense" counts to increase an offender's sentence under the DUI laws if the arrest for that offense occurred within seven years of the arrest for the current offense. "Prior offenses" include convictions for: (a) DUI; (b) vehicular homicide and vehicular assault; (c) negligent driving after having consumed alcohol ("wet neg"), reckless driving, and reckless endangerment if the original charge was DUI, vehicular homicide, or vehicular assault; and (d) equivalent local DUI ordinance or out-of-state law. In addition, a deferred prosecution for DUI or "wet neg" counts as a prior offense even if the charges are dropped after successful completion of the deferred prosecution treatment program.

In addition to serving mandatory jail time, a DUI offender is subject to many other sanctions. These include fines, loss of driving privileges, alcohol assessment, the mandatory use of an ignition interlock system on any vehicle the offender drives, and probation.

FELONY SENTENCING UNDER THE SENTENCING REFORM ACT. An adult who is convicted of a felony is sentenced under the provisions of the Sentencing Reform Act (SRA). The SRA has a sentencing grid in statute that provides a standard sentence range based on the seriousness level of the current offense and the offender's prior criminal history score. Unless the sentencing judge imposes an exceptional sentence upward or downward, the sentencing judge will sentence the offender to a period of confinement within that standard range. However, in no case may a sentence be longer than the maximum allowed by statute for a particular class of felony. For class C felonies, this maximum is five years in prison.

Felonies are "ranked" in the SRA from Level I (low) to Level XVI (high). An offender's criminal history score ranges from 0 to 9+ and is calculated based on complex rules relating to the number and type of past convictions and the current conviction. A few prior non-felony crimes can count toward an offender's score in sentencing for a current felony. "Serious traffic" offenses are non-felony crimes that count when the current offense is a felony traffic offense. Serious traffic offenses include DUI, reckless driving, and hit-and-run driving. The SRA has "washout" periods that determine how long a prior conviction continues to count toward an offender's score. Class C felonies and serious traffic offenses wash out if the offender has spent five years without committing an offense since the date of his or her release from confinement.

Although the SRA is said to be "determinate" because at the time of sentencing the length of incarceration actually to be served is known with relative certainty, for some less serious offenses an offender may earn an early release of up to one-third off a sentence. In addition, the SRA allows for a first-time offender waiver for offenders committing less serious offenses. In those cases, the court has broad discretion in sentencing and may give jail sentences of up to 90 days and community service of up to one year.

COSTS OF INCARCERATION. Local jurisdictions bear the costs of incarceration when a sentence of one year or less is given. Because one year is the maximum sentence for a gross misdemeanor, all costs of incarcerating DUI offenders are borne by cities and counties. The state pays for the costs of incarceration for felony offenders who are sentenced to a term of confinement of more than one year.

DUI FELONIES IN OTHER STATES. Many states have felony DUI laws. One report indicates that 47 states have some form of felony DUI law. A conviction for a felony carries different consequences than a conviction for a misdemeanor. Maximum incarceration sentences for felonies are substantially longer, and a felony conviction results in the loss of the right to possess a firearm. It is difficult to make accurate comparisons between Washington's structured gross misdemeanor DUI law and other states' felony DUI laws with respect to jail or prison time actually served by DUI offenders. Felony sentencing laws vary widely from state to state. Sentencing features such as indeterminate sentencing, judicial discretion, good-time early release, probation, and parole can result in the sentences imposed being dramatically different from the sentences served.

Summary of Bill:

DUI becomes a class C felony when an offender has two or more prior offenses within seven years. For the purposes of determining if felony DUI is applicable, "prior offenses within seven years" has the same meaning as used in current DUI law.

Felony DUI is ranked at Level V under the SRA. This ranking means that for a first-time felony DUI offender with no priors beyond those necessary to make the crime a felony (e.g., the two DUI gross misdemeanors in the previous seven years), the presumptive sentence range would be 13 to 17 months in prison. For offenders with more criminal history, the presumptive range will be higher. Felony DUI offenders are not eligible for first-time offender waivers under the SRA.

The washout period for a prior felony DUIs and serious traffic convictions is changed to include both the five year period and the seven year DUI period. The time required before a felony DUI may be vacated is seven years.

Appropriation: None.

Fiscal Note: Available.

Effective Date: This bill contains an emergency clause and takes effect immediately.