

# HOUSE BILL REPORT

## E2SHB 1614

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### As Amended by the Senate

**Title:** An act relating to impaired driving.

**Brief Description:** Concerning impaired driving.

**Sponsors:** House Committee on Transportation (originally sponsored by Representatives Goodman, Klippert, Orwall, Hayes, Pellicciotti, Holy, Griffey, Pettigrew, Muri and Haler).

**Brief History:**

**Committee Activity:**

Public Safety: 2/7/17, 2/9/17 [DPS];

Transportation: 2/22/17, 2/23/17 [DP2S(w/o sub PS)].

**Floor Activity:**

Passed House: 3/2/17, 95-3.

Senate Amended.

Passed Senate: 4/20/17, 47-2.

#### Brief Summary of Engrossed Second Substitute Bill

- Imposes an express requirement that, in order to vacate a record of conviction for an impaired driving related "prior offense," 10 years must have elapsed since the arrest for the prior offense.
- Requires a law enforcement officer to make a warrantless arrest and hold a person suspected of impaired driving in custody when the arresting officer knows that the person is charged with or awaiting arraignment on another offense related to impaired driving.
- Creates a medical exemption to the requirement that an ignition interlock restriction is tolled during the time that a person does not have an ignition interlock device installed on his or vehicle.
- Requires 180 consecutive violation-free days prior to release of an ignition interlock restriction, rather than four months.
- Amends the exceptions to the standard penalties for a second impaired driving offense.
- Makes changes to the laws regarding the admissibility of tests for blood and breath alcohol concentration in an impaired driving investigation.

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*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.*

- Requires the court to notify the Department of Licensing (DOL) of any person who willfully fails to appear after having been "notified of" (rather than "served with") a traffic infraction or traffic-related criminal complaint.
- Allows ignition interlock companies to retain \$1 of the \$20 monthly payments that are made by device users to the companies to offset the companies' administrative costs associated with the collection of the payments and remittance to the DOL.

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## HOUSE COMMITTEE ON PUBLIC SAFETY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Goodman, Chair; Pellicciotti, Vice Chair; Klippert, Ranking Minority Member; Hayes, Assistant Ranking Minority Member; Appleton, Chapman, Orwall, Pettigrew and Van Werven.

**Minority Report:** Without recommendation. Signed by 2 members: Representatives Griffey and Holy.

**Staff:** Omeara Harrington (786-7136).

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## HOUSE COMMITTEE ON TRANSPORTATION

**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 Public Safety. Signed by 24 members: Representatives Clibborn, Chair; Farrell, Vice Chair; Fey, Vice Chair; Wylie, Vice Chair; Orcutt, Ranking Minority Member; Hargrove, Assistant Ranking Minority Member; Harmsworth, Assistant Ranking Minority Member; Chapman, Gregerson, Hayes, Irwin, Kloba, Lovick, McBride, Morris, Ortiz-Self, Pellicciotti, Pike, Riccelli, Shea, Stambaugh, Tarleton, Van Werven and Young.

**Staff:** Patricia Hasan (786-7292).

### **Background:**

#### Vacating Conviction Records.

A person convicted of a misdemeanor or gross misdemeanor offense who has completed all of the terms of the sentence and has met other statutory criteria may apply to the sentencing court for a vacation of the record of conviction. Certain convictions cannot be vacated, including convictions for Driving Under the Influence (DUI) or Actual Physical Control While Under the Influence (PC).

A record of conviction for a gross misdemeanor that is considered a "prior offense" under the impaired driving laws may not be vacated if the person has had a subsequent alcohol or drug violation within 10 years of the date of conviction of the prior offense. The term "prior offense" is defined and generally includes convictions for alcohol and drug-related driving offenses, such as negligent driving in the first degree, impaired operation of a vessel, reckless

driving if the original charge was DUI, and any deferred prosecution for similar alcohol-related driving offenses.

#### Mandatory Arrest and Hold.

A law enforcement officer must arrest a person without a warrant, and keep him or her in custody pending release on bail, personal recognizance, or a court order, when the officer has probable cause to believe that the person has committed a DUI or PC offense and the officer knows that the person has had at least one prior offense within the previous 10 years. The requirement does not apply if the person requires immediate medical attention and is admitted to a hospital.

#### Criminal and Administrative Penalties for Impaired Driving Convictions.

The criminal penalties associated with a DUI or PC conviction vary according to how many prior offenses a person has and the defendant's blood alcohol concentration (BAC) at the time of testing.

If a defendant has no prior offenses in seven years, the court must impose a minimum term of imprisonment, a portion of which cannot be suspended unless the court makes written findings that the mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. In lieu of the mandatory minimum, the court may order a term of electronic home monitoring (EHM) or 24/7 Sobriety Program monitoring. The 24/7 Sobriety Program is a 24-hour and seven-day a week sobriety program in which a participant submits to the testing of the participant's blood, breath, urine, or other bodily substances in order to determine the presence of alcohol, marijuana, or any controlled substance in the participant's body. Participants who violate the terms of the program are subject to sanctions.

A second or subsequent offense in seven years carries both a mandatory minimum term of incarceration as well as a minimum term of EHM. The court must impose the minimum term of incarceration, but may order additional jail time or a term of 24/7 Sobriety Program monitoring in place of the mandatory EHM. If a person has two or three prior offenses, the mandatory minimum EHM may only be replaced by additional jail time.

A person found guilty of DUI or PC is subject to additional sanctions, including a mandatory term of driver's license suspension or revocation. The period of suspension or revocation ranges between 90 days and four years, depending on the person's BAC at the time of testing and the number of prior offenses. For first time offenders, a portion of the term of driver's license suspension may be avoided through participation in 24/7 Sobriety Program monitoring.

#### Ignition Interlock Requirements.

The Department of Licensing (DOL) must require that a person only drive a vehicle equipped with a functioning ignition interlock device in certain circumstances, including:

- when required by court order as a condition of pretrial release;
- while the person has an ignition interlock driver's license;
- when a person is participating in a deferred prosecution for DUI, PC, or other specified offenses;

- during any applicable period of suspension, revocation, or denial of driving privileges due to a conviction for DUI, PC, or other specified offenses; and
- upon order of a court restricting a person who is charged or convicted with any offense involving the use, consumption, or possession of alcohol while operating a motor vehicle.

An ignition interlock user must pay the cost of installing, removing, and leasing the ignition interlock device, unless the ignition interlock company waives costs or the person is indigent. In addition, the applicant must pay a monthly \$20 fee for deposit into the Ignition Interlock Device Revolving Account. The applicant must pay the \$20 fee directly to the ignition interlock company, which, in turn, remits the fee to the DOL for deposit into the account.

The duration of the ignition interlock restriction depends on the circumstances under which the restriction was imposed. The DOL will not remove a restriction associated with a deferred prosecution or conviction until it receives a declaration from the ignition interlock vendor certifying that the four consecutive months leading up to the removal have been free of certain specified incidents including:

- any attempt to start the vehicle with a BAC of 0.04 or more;
- failure to take any random test;
- failure to pass any random retest with a BAC of 0.025 or lower; or
- failure of the person to appear at the ignition interlock device vendor when required for maintenance, repair, calibration, monitoring, inspection, or replacement of the device.

The period of restriction associated with a deferred prosecution or conviction must be tolled during the period of time that the restricted person does not have an ignition interlock device installed on a vehicle owned or operated by the person.

#### Admissibility of Blood and Breath Tests.

Analysis of a person's blood or breath must be performed according to methods approved by the state toxicologist.

A breath test performed by any instrument approved by the state toxicologist is admissible at trial or in an administrative proceeding if there is prima facie evidence of certain factors, including, but not limited to, evidence that: the test was performed by a person authorized by the state toxicologist to perform the test; the person being tested did not vomit or have anything to eat, drink, or smoke for at least 15 minutes prior to administration of the test; and the person being tested did not have any foreign substances, not to include dental work, in his or her mouth.

When a blood test is administered for the purpose of determining its alcoholic or drug content, the blood withdrawal may only be performed by statutorily authorized professionals including physicians, nurses, physician assistants, and medical assistant-certified or medical-assistant phlebotomists, among others. Proof of a person's qualification to draw blood may be established through the Department of Health's online provider credential search.

Statute provides that the refusal of a person to submit to a test of the alcohol or drug concentration in the person's blood or breath is admissible into evidence at a subsequent trial.

### License Suspension for Willful Failure to Appear.

Among other circumstances, the DOL must suspend a person's driver's license when the person willfully fails to appear at a requested hearing for a moving violation or fails to comply with the terms of the notice of a traffic-related criminal complaint. Whenever a person served with a traffic citation or a traffic-related criminal complaint willfully fails to appear or comply, the court must promptly provide notice to the DOL.

### **Summary of Engrossed Second Substitute Bill:**

#### Vacating Conviction Records.

The restrictions on vacating an impaired driving-related "prior offense" are amended to add an express requirement that 10 years has elapsed since the arrest for the prior offense. The current law requirement remains that the applicant must also not have had an alcohol or drug violation within 10 years of the arrest for the vacated offense.

#### Mandatory Arrest and Hold.

In addition to persons who have been convicted of a prior offense, persons suspected of impaired driving must be arrested without a warrant and held in custody pending release on bail, personal recognizance, or court order when the arresting officer knows that the person is charged with or awaiting arraignment on another offense related to impaired driving.

#### Criminal and Administrative Penalties for Impaired Driving Convictions.

For a second impaired driving offense, the court may replace the entire standard sentence of incarceration and EHM with a longer term of either EHM or 24/7 Sobriety Program monitoring. For offenders who had a lower BAC of testing, the court may replace the standard sentence with 120 days of either EHM or 24/7 Sobriety Program monitoring. For higher BAC offenders, six months of either EHM or 24/7 Sobriety Program monitoring may replace a standard sentence.

Additionally, second time offenders with a lower BAC may avoid up to one year of the mandatory two-year driver's license suspension through participation in 24/7 Sobriety Program monitoring.

#### Ignition Interlock Requirements.

A person must have 180 consecutive violation-free days prior to release of an ignition interlock restriction, rather than four months.

A person may receive a medical exemption to the mandatory tolling of the ignition interlock restriction that applies during the period of time that there is no ignition interlock device installed on a restricted person's vehicle. In order to be granted an exemption, a person must obtain a determination from the DOL indicating that the person is unable to operate the ignition interlock due to a physical disability. The DOL may charge a person seeking an exemption a reasonable fee for the assessment.

Ignition interlock companies may retain \$1 of the monthly \$20 payments that are made by device users in order to offset the companies' administrative costs associated with collection

of the payments and remittance to the DOL for deposit in the Ignition Interlock Device Revolving Account

Admissibility of Blood and Breath Tests.

An exception is made for piercings in the requirement that, in order for a breath sample to be admissible, the person providing the sample must have nothing in his or her mouth.

In addition to other authorized professionals, any person certified under 18.71 RCW as a physician's trained advanced emergency medical technician and paramedic may perform blood draws pursuant to an impaired driving investigation, so long as the withdrawal is consistent with the protocols of the certified persons employing agency. Persons with advanced emergency medical technician or paramedic licensure under 18.73 RCW are removed from the list of authorized professionals. For blood draws occurring outside of the state, any health care provider may perform a withdrawal, provided he or she is lawfully authorized to perform the withdrawal of blood for the purpose of determining its alcoholic or drug content in the state in which the withdrawal takes place.

The statute regarding the admissibility of a person's refusal to submit to a blood or breath test is amended to indicate that a refusal to submit to a blood test is admissible if a search warrant, or an exception to the warrant requirement, authorized the seizure.

License Suspension for Willful Failure to Appear or Comply.

A court must notify the DOL of a person who is "notified of" (in addition to a person who is "served with") a traffic infraction or a traffic-related criminal complaint, when the person willfully fails to appear or comply as required by the infraction or complaint.

**EFFECT OF SENATE AMENDMENT(S):**

All provisions of the underlying bill remain; however: (1) ignition interlock companies may retain 25 cents, rather than \$1, of the \$20 monthly payments that are made by device users to offset the companies' administrative costs associated with the collection of the payments and remittance to the DOL; (2) current law is reinstated requiring a minimum of four or six days of jail time (depending on the person's BAC) under the alternative sentencing scheme for impaired driving offenders with one prior offense, and the length of electronic home monitoring or 24/7 sobriety monitoring under the alternative sentencing scheme is set at 180 days of electronic home monitoring, or 120 days of 24/7 sobriety monitoring, regardless of the person's BAC.

The provisions relating to persons authorized to administer blood draws in impaired driving investigations are modified. If a blood draw is performed outside of Washington, any person who is authorized by the out of state jurisdiction to perform venous blood draws may perform the withdrawal (rather than any person lawfully authorized to perform the withdrawal of blood for the purpose of determining its alcoholic or drug content). The provision making an advanced emergency medical technician or paramedic's authority to perform a blood draw conditional upon compliance with the protocols of the certified person's employing agency is removed.

All credentialed persons with a scope of practice that includes performing venous blood draws, and forensic phlebotomists, are added to the list of professionals authorized to perform blood draws in impaired driving investigations. A forensic phlebotomist is defined as a police officer, law enforcement officer, or employee of a correctional or detention facility who is certified by the DOH, and meets any training and proficiency standards of his or her employer, to collect venous blood samples for forensic testing. The DOH must establish rules specifying minimum qualifications for forensic phlebotomists. These qualifications must include training consistent with the Occupational Safety and Health Administration guidelines and between 20 and 30 hours of work in a clinical setting and at least 100 successful venipunctures. The DOH may not require more than 40 hours of classroom training. If a withdrawal is performed by a forensic phlebotomist, certain conditions must be complied with, including: (1) if the sample is taken at the scene, it must be performed in an ambulance or aid service vehicle licensed by the DOH; (2) collection of the sample must not interfere with the provision of essential medical care; (3) the sample must be collected using sterile equipment and the skin area of puncture must be thoroughly cleansed and disinfected; and (4) the person whose blood is being collected must be seated, reclined, or lying down when the blood is collected.

Provisions are added allowing cities and counties to accept local account fund transfers into local 24/7 sobriety accounts to defray the participating agency's costs of administering local 24/7 sobriety programs.

An existing \$200 fee imposed on all persons convicted of DUI, PC, Vehicular Homicide, or Vehicular Assault is increased to \$250. The additional \$50 must be distributed to the Highway Safety Fund to be used solely for funding Washington Traffic Safety Commission grants to organizations within counties targeted for programs to reduce impaired driving. A minimum of \$300,000 of these grant funds must support pilot programs in King and Spokane counties that are designed for persons with two or more prior offenses in seven years and include evidence-based assessment, enhanced intensive outpatient substance use disorder treatment, monitoring, and, when needed, priority entry into voluntary or involuntary detoxification services or residential substance use disorder treatment.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony (Public Safety):**

(In support) This bill is the product of a comprehensive work group that examined a range of issues. There is a lot of detail in the DUI statutes. These seem to be minor changes, but they are actually significant.

(Opposed) None.

(Other) There are no issues with the overall bill. However, there are concerns with the section in the bill allowing paramedics to perform blood draws. Under current law, paramedics licensed under 18.73 RCW are covered, but those under 18.71 RCW are not. Paramedics are often dealing with people who have been in a car accident. Following a trauma incident, responders want to get the patient to the hospital in under 15 minutes. These blood draws are technical procedures that need to be done in a specific manner and must meet certain requirements, such as not using alcohol wipes and having adequate chain of custody. The party performing the draw may also be subpoenaed. Firefighters are not experts with these situations, and it is important to avoid technical errors in criminal cases. Additionally, it is important to be able to treat the person like a patient, and allow for them to be honest about what happened. Although the statute is permissive, the DOL policies often require compliance with law enforcement requests.

The change to the safely off the roadway defense effectively eliminates the defense. The factors in the bill describe a situation in which the person is not actually in physical control. The safely off the roadway defense in current law makes policy sense, in that it encourages people to get off of the roadway. There is a jury instruction that is based on case law, and allows the jury to decide whether or not someone did the right thing under the specific facts of the case. Very few of these cases go to trial, and there has not been an epidemic of acquittals on this basis. The law should be left as it is today.

There is a practical issue with ignition interlock requirements that should be addressed in this bill. As of last June, if a driver cannot use an ignition interlock, the period of restriction is tolled. There are people with disabilities that cannot operate an interlock device, which results in a lifetime prohibition from driving. There should be a medical exception from the tolling provision available upon proof of medical disability.

The DOL's current process of collecting monthly \$20 fees from ignition interlock users through the six ignition interlock companies is already cumbersome. Under this bill, the DOL would receive \$20 from every ignition interlock user every month, as opposed to six checks. The State Treasurer requires use of a lock box. It is anticipated that there will be higher call volumes in customer service centers.

**Staff Summary of Public Testimony (Transportation):**

(In support) For 10 years, there has been an informal impaired driving working group including all stakeholders interested in reducing impaired driving, and a lot of progress has been made. Only one-quarter of the fatalities and serious injuries on Washington's roads are related to drunk driving, down from what used to be one-half of all fatalities and serious injuries. Washington should keep making progress to making our roads safer.

(Opposed) None.

(Other) A technical amendment is requested for this bill that would clarify that advanced emergency medical technicians and paramedics be in compliance with their employer's medical program.

**Persons Testifying (Public Safety):** (In support) Representative Goodman, prime sponsor.



(Other) Michael White, Washington State Council of Fire Fighters; Jason Lantz, Washington Association of Criminal Defense Lawyers and Washington Defender Association; Tony Sermonti, Department of Licensing; and Shelly Baldwin, Traffic Safety Commission.

**Persons Testifying** (Transportation): (In support) Representative Goodman, prime sponsor.

(Other) Michael White, Washington State Council of Fire Fighters.

**Persons Signed In To Testify But Not Testifying** (Public Safety): None.

**Persons Signed In To Testify But Not Testifying** (Transportation): None.