
HOUSE BILL 2013

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By Representatives Scott, Appelwick, May, Leonard, Ballard, Ferguson, Ludwig, Moyer, Morris, Jacobsen, Wang, Van Luven, Tate, Nealey, Brough, Rasmussen, Chandler and Holland.

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1 AN ACT Relating to sobriety checkpoints; and adding a new chapter
2 to Title 46 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** This chapter shall be known and may be
5 cited as the Washington Sobriety Checkpoint Program Act.

6 NEW SECTION. **Sec. 2.** The Washington state legislature
7 recognizes and declares that, in accordance with statistical data
8 maintained by the national highway traffic safety administration and
9 the Washington traffic safety commission:

10 (1) There were in excess of forty-six thousand traffic fatalities
11 nation-wide in 1984, at an average of one fatality every eleven and
12 four-tenth minutes, of which approximately fifty percent involved
13 alcohol use;

1 (2) That every intoxicated driver charged by police departments
2 nation-wide represents only one out of every two thousand intoxicated
3 drivers actually on the highways of this nation;

4 (3) Of all intoxicated drivers charged with violating drunk driving
5 laws nation-wide, approximately eighty-three percent have breath levels
6 of alcohol in excess of 0.10 percent;

7 (4) The greater percentage of motor vehicle accidents involving
8 alcohol use occur between the hours of nine p.m. and three a.m., with
9 a greater percentage of accidents during that time period occurring on
10 weekends;

11 (5) Washington's experience is consistent with the nation-wide
12 statistics developed in subsections (1) through (4) of this section;

13 (6) The most recent available traffic safety statistics show that
14 in 1989 Washington had seven hundred eighty-one reported traffic
15 deaths, of which three hundred fifty-three, or over forty-five percent,
16 involved drivers under the influence, and nine thousand four hundred
17 thirty-six investigated accidents that involved drivers under the
18 influence, of which five thousand six hundred twenty-two involved
19 injury to eight thousand eight hundred ninety-eight persons. These
20 numbers are conservative because they do not include the deaths and
21 injuries from drivers under the influence but not over the legal limit,
22 nor those who were under the influence and left the scene of the
23 accident;

24 (7) In excess of twenty-five billion dollars per year is spent or
25 lost nation-wide because of the abuse and misuse of alcohol relating to
26 lost production, medical expenses, motor vehicle accidents, alcohol
27 abuse treatment, and social welfare programs;

28 (8) The full and effective use of resources available to state and
29 local governments must be brought to bear to solve the serious problem

1 caused by the misuse and abuse of alcohol and drugs in situations
2 involving the operation of motor vehicles; and

3 (9) At fixed, publicized-in-advance traffic checkpoints, the
4 motorist can see that other vehicles are being stopped, can see visible
5 signs of a police officer's authority, and is much less likely to be
6 frightened or annoyed by the intrusion.

7 NEW SECTION. **Sec. 3.** (1) It is the policy of this state to
8 take all reasonable actions to protect the public safety and welfare
9 from the extremely grave menace posed by drivers of motor vehicles who
10 are intoxicated either by alcoholic beverages, drugs, or any
11 combination of them. The state has a vital interest in promoting
12 public safety upon the highways by detecting and prosecuting these
13 intoxicated drivers. The establishment of sobriety checkpoints is
14 viewed as a reasonable means of protecting this vital public interest.
15 Given the importance of the governmental interest at stake, there is
16 deemed to be a minimal intrusion in a brief stop required by such a
17 checkpoint, especially in the absence of effective alternatives for
18 policing and deterring intoxicated drivers. It is accepted that a
19 person's expectation of privacy in an automobile and of freedom in its
20 operation are significantly different from the traditional expectation
21 of privacy and freedom in a person's residence.

22 (2) The use of sobriety checkpoints (a) which are designed to focus
23 on the sobriety of the driver and (b) which, in order to safeguard the
24 privacy and security of individuals against arbitrary invasions, do not
25 permit the exercise of unfettered and unconstrained discretion by
26 government officials, is established as the public policy of the state
27 of Washington. The nature of alcohol or drug intoxication and the
28 evidence of accidents involving intoxicated drivers referenced in
29 section 2 of this act were considered when balancing the need of

1 society against minimal intrusion to the right of the person as granted
2 by the Fourth Amendment of the United States Constitution or Article I,
3 section 7 of the state Constitution in allowing government an adequate
4 means of guarding the public safety and welfare. For these reasons,
5 the state of Washington adopts a policy of encouraging the use of
6 sobriety checkpoints established under this chapter.

7 (3) The legislature limits the purpose and conduct of sobriety
8 checkpoint programs to focusing on whether the driver of the vehicle
9 stopped is driving under the influence and not on whether there are
10 other potential offenses for which the driver or passengers might be
11 cited or arrested. Nothing in this chapter shall be construed to
12 prevent officers staffing sobriety checkpoints from taking such
13 reasonable measures necessary for the immediate protection of their
14 safety or the safety of those stopped or of the public.

15 NEW SECTION. **Sec. 4.** (1) A program of sobriety checkpoints is
16 established for the purpose of detecting and prosecuting drivers
17 influenced by the use of alcohol, drugs, or any combination of them.
18 The chief of the Washington state patrol and local law enforcement
19 agencies are authorized to establish a program of checkpoints in
20 accordance with the minimum standards and guidelines set forth in
21 section 5 of this act. Any such program is deemed to be in response to
22 the legislative findings and public policy referenced in sections 2 and
23 3 of this act.

24 (2) The chief of the Washington state patrol and local law
25 enforcement agencies that establish such a sobriety checkpoint program
26 shall implement the program by written procedures in conformity with
27 and not more intrusive upon the privacy and security of drivers than
28 the standards and guidelines of section 5 of this act. Each agency
29 shall make these procedures a matter of public notice.

1 (3) A search warrant issued pursuant to section 6 of this act shall
2 be required before a sobriety checkpoint program may be operated.

3 NEW SECTION. **Sec. 5.** (1) Any program of sobriety checkpoints
4 established by the chief of the Washington state patrol or local law
5 enforcement agencies under section 4 of this act shall meet the
6 standards and guidelines of this section, which shall be deemed to be
7 minimum requirements. Nothing contained in this section may be
8 construed as preventing the chief of the Washington state patrol or
9 local law enforcement agencies from following additional standards and
10 guidelines, especially those that may be established by the judiciary,
11 if those standards and guidelines are not more intrusive upon the
12 privacy and security of drivers than those imposed by this section.

13 (2) Every agency using sobriety checkpoints shall meet the
14 following criteria:

15 (a) All officers engaged in the operation of sobriety checkpoints
16 shall meet the training standards for field sobriety testing as
17 established by the Washington state patrol and shall be personally
18 familiar with each of the privacy protections limiting officers'
19 discretion during sobriety checks enumerated in this chapter and the
20 provisions regarding the admissibility of evidence.

21 (b) Each sobriety checkpoint location and time shall be selected at
22 least two weeks in advance by agency management personnel other than
23 those staffing the checkpoints. Locations shall be selected by
24 analyzing objective data, including, but not limited to, accident and
25 arrest statistics for driving while under the influence, in order to
26 maximize contact with offenders of laws against driving while under the
27 influence of intoxicants.

28 (c) The sobriety checkpoints may be conducted only between the
29 hours of nine p.m. and three a.m. on any given day.

1 (d) The operating agency shall provide for a sufficient quantity
2 and visibility of uniformed officers and marked patrol vehicles to
3 assure timely processing of intoxicated drivers, as well as to move
4 traffic with a minimum of inconvenience.

5 (e) The sobriety checkpoints shall be supervised by an officer with
6 the rank of sergeant or above.

7 (f) All officers involved in any sobriety checkpoint stop shall be
8 in uniform, shall carry proper identification, and shall use marked
9 patrol vehicles.

10 (g) The sobriety checkpoint location shall provide adequate
11 illumination and a safe place to stop off the roadway. The location
12 shall also contain an off-road holding area for vehicles involved in
13 the sobriety checkpoint.

14 (h) Adequate warning of the checkpoint shall be provided through
15 the use of signs and flares. Signs stating "Sobriety Checkpoint
16 Ahead--Prepare to Stop" shall be placed an adequate distance before the
17 location, in the direction of the traffic flow. Signs shall be at
18 least thirty-six inches square, with the letters "Sobriety Checkpoint
19 Ahead--Prepare to Stop" being at least six inches high.

20 (i) Sobriety checks shall be made on a completely random basis
21 without discrimination. No more vehicles may be stopped at any one
22 time than can be inspected effectively by the available officers. When
23 an officer is available, the first vehicle approaching the sobriety
24 checkpoint location shall be signaled to stop for a sobriety check.

25 (j) All sobriety checkpoints shall be located at a fixed location
26 and shall not be conducted as random or roving patrols.

27 (k) The supervisor may terminate the sobriety checkpoint when
28 staffing levels decrease because of processing intoxicated drivers,
29 other emergency needs, or when traffic congestion would otherwise
30 result.

1 (1) The discretion of officers conducting sobriety checks shall be
2 limited minimally by the following procedures:

3 (i) Officers shall address all questions only to the driver except
4 the officer may ask passengers only if the driver was or had been
5 drinking liquor or taking drugs that would impair driving ability, but
6 the passengers have no obligation to answer and the officer shall not
7 press the passengers for answers nor wake sleeping passengers to obtain
8 a response;

9 (ii) Officers may ask the driver if he or she had been drinking
10 that day or any time that day or evening prior to driving;

11 (iii) Officers may request the driver's license and proof of
12 insurance, but may issue only warnings for a failure to have them on
13 the person. If a valid license is not produced the officers may detain
14 the vehicle until a licensed person arrives who may drive the vehicle.
15 In the event the vehicle is detained pending arrival of a licensed
16 driver it may not be inventoried or searched absent a warrant for such
17 a search;

18 (iv) Officers may ask the driver if all in the vehicle are wearing
19 seat belts, and may issue only a warning if any persons are not wearing
20 a seat belt, but the officer may not examine the vehicle nor its
21 occupants regarding seat belts;

22 (v) Officers are not permitted to make a visual check of the
23 vehicle interior or of the passengers absent specific probable cause
24 for such a search;

25 (vi) An officer may use a prearrest breath test instrument only if
26 that officer, trained in the criteria, determines that the criteria for
27 using such instruments developed by the Washington state patrol, or by
28 the implementing agency and approved by the court issuing the search
29 warrant, have been met.

1 (m) Each agency conducting sobriety checkpoints shall establish
2 operational procedures, including, but not limited to:

3 (i) Sobriety checkpoints configurations;

4 (ii) Placement of signing;

5 (iii) Placement of flares;

6 (iv) Method of processing alcohol-affected drivers including the
7 procedures in (l) of this subsection; and

8 (n) The agency conducting sobriety checkpoints shall publicize the
9 fact, location, and time period of the planned checkpoints beginning a
10 minimum of four days before the checkpoint is to be carried out using
11 means calculated to reach the largest number of people.

12 Each agency shall make these procedures a matter of public notice.

13 NEW SECTION. **Sec. 6.** A superior court presiding judge or the
14 judge's judicial designee shall review the establishment of a program
15 of sobriety checkpoints and issue an area-wide search warrant upon a
16 showing that:

17 (1) The program complies with section 5 of this act;

18 (2) The program will not be operated close to checkpoints operated
19 by other law enforcement agencies so that the public is unreasonably
20 inconvenienced; and

21 (3) No sobriety checkpoints are to be conducted by local or state
22 jurisdictions on federal interstate highways.

23 NEW SECTION. **Sec. 7.** It shall be presumed that any evidence
24 obtained during a sobriety checkpoint stop is inadmissible as evidence
25 except to prosecute the driver for driving under the influence of
26 intoxicants. Any agency attempting to use evidence obtained during a
27 sobriety checkpoint stop to prosecute any other offense shall have the
28 burden of overcoming this presumption of inadmissibility by

1 demonstrating with clear and convincing evidence the existence of
2 probable cause for the search and seizure resulting in the evidence.
3 The "open view" or "plain view" exceptions to the warrant requirement
4 are specifically excluded as a legal basis for obtaining and admitting
5 such evidence obtained during a sobriety checkpoint stop.

6 NEW SECTION. **Sec. 8.** If any provision of this chapter, or the
7 application thereof to any person or circumstances, is held invalid,
8 such invalidity shall not affect other provisions or applications of
9 the chapter which can be given effect without the invalid provision or
10 application, and to this end the provisions of this chapter are
11 declared to be severable.

12 NEW SECTION. **Sec. 9.** Sections 1 through 8 of this act shall
13 constitute a new chapter in Title 46 RCW.