

HOUSE BILL REPORT

HB 3076

As Reported by House Committee On:
Judiciary

Title: An act relating to making it a felony to drive or be in physical control of a vehicle while under the influence of intoxicating liquor or any drug when the person has three prior offenses within seven years or has a prior conviction for vehicular homicide or vehicular assault.

Brief Description: Changing penalties for driving or physical control of a vehicle under the influence of intoxicating liquor or any drug.

Sponsors: Representatives Ahern, Lantz, McCoy, Nixon, Simpson, Woods, Serben, Springer, Conway, Kessler, Green and Morrell.

Brief History:

Committee Activity:

Judiciary: 1/24/06, 1/27/06 [DPS].

Brief Summary of Substitute Bill

- Makes drunk driving a class C felony, ranked as a seriousness level V under the Sentencing Reform Act, if the offender: (a) has three or more prior offenses within seven years; or (b) has ever been convicted of vehicular assault while under the influence or vehicular homicide while under the influence.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Lantz, Chair; Williams, Vice Chair; Priest, Ranking Minority Member; Rodne, Assistant Ranking Minority Member; Campbell, Kirby, Serben, Springer and Wood.

Minority Report: Without recommendation. Signed by 1 member: Representative Flannigan, Vice Chair.

Staff: Trudes Tango (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 minimum penalties are as follows:

First offense:

- *BAC under 0.15 or no BAC for reasons other than refusal*- one day in jail or 15 days of electronic monitoring; \$350 fine; 90 days license loss.
- *BAC of 0.15 or higher or person refused BAC* - two days in jail or 30 days of electronic monitoring; \$500 fine; one year license loss or two years if refused BAC.

One prior offense within seven years:

- *BAC under 0.15 or no BAC for reasons other than refusal* - 30 days in jail and 60 days of electronic monitoring; \$500 fine; two years license loss.
- *BAC of 0.15 or more or person refused BAC* - 45 days in jail and 90 days of electronic monitoring; \$750 fine; 900 days license loss or three years if refused BAC.

Two or more prior offenses within seven years:

- *BAC under 0.15 or no BAC for reasons other than refusal* - 90 days in jail and 120 days of electronic monitoring; \$1000 fine; three years license loss.
- *BAC of 0.15 or more or person refused BAC* - 120 days in jail and 150 days of electronic monitoring; \$1500 fine; four years license loss.

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 if either was committed while under the influence; (c) negligent driving after having consumed alcohol ("wet neg"), reckless driving, and reckless endangerment if the original charge was DUI; and (d) any 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 other sanctions that include 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 numerous factors, including the number of prior felony convictions and the relationship between those prior

convictions and the current offense. A few prior non-felony crimes can count toward an offender's score in sentencing for a current felony. "Serious traffic" offenses, which include DUI, are non-felony crimes that count when the current offense is a felony traffic offense. Prior felony traffic offenses, which include vehicular assault and vehicular homicide, count double when the current offense is also a felony traffic offense.

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.

The SRA also has sentencing alternatives for some types of offenders, such as the first-time offender waiver program, drug offender sentencing alternative (DOSA), and work ethic camp.

At the time of sentencing, the court also imposes a term of community custody for certain offenders, including those offenders who have been convicted of an offense categorized as a "Crime Against Persons." Conditions of community custody and levels of supervision are based on risk. The court has discretion when setting the range of community custody, but generally, the range for a person convicted of a "Crime Against Persons" will be between nine to 18 months.

Under the SRA, an offender may earn an early release of up to 50 percent off a sentence for less serious offenses. For offenses categorized as "Crimes Against Persons" and other serious offenses, an offender may receive earned early release time up to one-third off.

JUVENILE ADJUDICATIONS

The Juvenile Justice Act governs the disposition (or sentencing) of juvenile offenders. The act contains a disposition grid with presumptive sanctions based on the seriousness of the offense and prior criminal history. Offenses are "categorized" (very much like ranking in the SRA) between Category E (least serious) through Category A+ (most serious). A DUI is categorized as a D offense. A juvenile adjudicated of DUI who has no prior criminal history will typically receive local sanctions, meaning the court may impose one or all of the following: 0-30 days in confinement in a local juvenile detention facility; 0-12 months of community supervision; 0-150 hours of community restitution; and/or \$0-\$500 fine. More serious offenders are subject to confinement in the state juvenile facility.

The Juvenile Justice Act provides disposition alternatives that give courts discretion to suspend the juvenile's disposition and impose conditions. Some of those alternatives include the suspended disposition alternative, the chemical dependency disposition alternative, and the mental health disposition alternative.

Summary of Substitute Bill:

A DUI is a class C felony if the offender: (a) has three or more prior offenses within seven years; or (b) has ever been convicted of vehicular homicide while under the influence of alcohol or drugs or vehicular assault while under the influence of alcohol or drugs.

Felony DUI is a Level V offense. This means a DUI offender with three prior misdemeanor DUIs will receive a presumptive sentence range of 15 - 20 months. A DUI offender with only one prior vehicular assault will have that prior count double, as provided under current SRA rules, and receive a presumptive sentence range of 13 - 17 months.

Felony DUI is categorized as a "Crime Against Persons" under the SRA. This means the offender is eligible for earned early release not to exceed one-third of his or her sentence and community custody provisions apply.

An offender is not eligible for the first time offender waiver program, DOSA, or work ethic camp. The court must order the offender to undergo treatment during incarceration. The offender shall be liable for the costs of treatment unless the court finds the offender indigent and no third-party insurance is available. The license suspension and ignition interlock provisions under the misdemeanor DUI laws apply.

The provisions under the SRA related to "wash out" periods and vacation of records are amended to include the seven year period in which "prior offenses" under the DUI laws are counted.

Under the Juvenile Justice Act, felony DUI is made a Category B+ offense. This means a juvenile with zero or one prior adjudication will receive a presumptive disposition range of 15 - 36 weeks in a state juvenile facility. Categorizing the offense as a B+ makes the juvenile ineligible for the chemical dependency disposition alternative, but not the suspended disposition alternative.

Substitute Bill Compared to Original Bill:

The substitute bill places sentencing of felony DUI under the Sentencing Reform Act, rather than exempting it from the SRA, as the original bill did.

Appropriation: None.

Fiscal Note: Requested on January 16, 2006.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed, except section 21 which reinstates prior law related to the definitions in the Sentencing Reform Act after a scheduled expiration and takes effect July 1, 2006.

Testimony For: (In support) Repeat DUI offenders are getting off too easy under the current law. They don't get serious time because DUI is a misdemeanor regardless of how many DUIs an offender has in his past. This bill will impose prison time. It has been worked and changed over the years. This bill also addresses cases where a person has previously committed vehicle homicide. Washington is just one of three states that does not have a

felony DUI law. Under this bill, a repeat offender will be sentenced long enough to get treatment in prison. The bill targets those who have already had prior opportunities for deferred prosecution and community treatment. This bill enhances public safety by removing those repeat offenders from the street.

(Neutral) The Washington Traffic Safety Commission (WTSC) takes no position on the bill. The WTSC depends largely on research. There is no research as of yet that says felony DUI does anything to reduce impaired driving. There has been a decrease of impaired driving in Washington.

Testimony Against: None.

Persons Testifying: (In support) Representative John Ahern, prime sponsor; Representative Pat Lantz; Anita Kronval; Pam Loginsky, Washington Association of Prosecuting Attorneys; and Robert Berg, Washington Association of Sheriffs and Police Chiefs.

(Neutral) Steve Lind, Washington Traffic Safety Commission.

Persons Signed In To Testify But Not Testifying: None.