

SENATE BILL REPORT

ESB 5054

As Passed Senate, February 9, 2022

Title: An act relating to impaired driving.

Brief Description: Concerning impaired driving.

Sponsors: Senators Padden, Frockt, Conway, McCune and Short.

Brief History:

Committee Activity: Law & Justice: 1/21/21, 1/28/21 [DP-WM].

Ways & Means: 2/09/21, 2/15/21 [DP, DNP, w/oRec].

Floor Activity: Passed Senate: 3/1/21, 41-7; 2/9/22, 48-0.

Brief Summary of Engrossed Bill

- Changes the period for reviewing prior convictions of impaired driving from a 10 year period to a 15 year period for the purpose of determining whether the current offense of impaired driving is a felony.
- Creates a new drug offender sentencing alternative for individuals convicted of felony impaired driving offenses.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass and be referred to Committee on Ways & Means.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Padden, Ranking Member; McCune, Assistant Ranking Member; Darneille, Holy, Kuderer, Salomon and Wagoner.

Staff: Tim Ford (786-7423)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Capital; Wilson, L., Ranking Member; Brown, Assistant Ranking Member, Operating; Honeyford, Assistant Ranking Member, Capital; Schoesler, Assistant Ranking Member, Capital; Braun, Carlyle, Conway, Darneille, Dhingra, Gildon, Hasegawa, Hunt, Keiser, Muzzall, Pedersen, Rivers, Van De Wege, Wagoner, Warnick and Wellman.

Minority Report: Do not pass.

Signed by Senators Robinson, Vice Chair, Operating & Revenue; Mullet.

Minority Report: That it be referred without recommendation.

Signed by Senator Lias.

Staff: Kayla Hammer (786-7305)

Background: Impaired Driving. A person commits the crime of driving while under the influence (DUI) of intoxicating liquor, marijuana, or any drug if the person drives a motor vehicle:

- with a blood or breath alcohol concentration of 0.08 percent or higher;
- with a THC concentration of five or higher in their blood; or
- under the influence or a combined influence of intoxicating liquor, marijuana, and any drug.

The same factors apply for the crime of being in physical control (PC) of a motor vehicle while under the influence of intoxicating liquor, marijuana, or any drug if the person has actual physical control of a vehicle.

A DUI or PC criminal offense is punishable as a gross misdemeanor if the person has fewer than three prior DUI or PC convictions within seven years. It becomes a class B felony for a DUI offense, and a class C felony for a PC offense if a person has three or more prior convictions within ten years.

Prior offenses include convictions for:

- DUI or PC;
- vehicular homicide and vehicular assault if either was committed while under the influence; and
- an equivalent local DUI or PC ordinance or out-of-state DUI law.

Sentencing Alternatives. When a person is convicted of a felony offense, a sentencing court is generally required to impose a term of confinement based on a standard range provided by statute. In some circumstances, sentencing courts have discretion to order sentencing alternatives. Sentencing alternatives generally result in a person serving a shorter term of confinement, and sometimes serving no term of confinement. Instead, the person may be required to participate in certain programs or treatment, or to submit to a form of partial confinement.

Drug Offender Sentencing Alternative. The drug offender sentencing alternative (DOSA) either reduces or eliminates incarceration time in exchange for the offender participating in supervision and treatment. A person convicted of a felony is eligible for a DOSA if certain criteria are met, including:

- the conviction is for an offense that is not a felony impaired driving offense, a violent offense, or a sex offense, and the violation does not involve a firearm or deadly weapon sentence enhancement;
- the offender has no current or prior convictions for a sex offense at any time, and no violent offense within the ten years before conviction of the current offense;
- if the offense is a violation of the Uniform Controlled Substances Act, a drug violation, it involved only a small quantity of the particular substance as determined by the judge;
- the offender is not subject to a federal immigration deportation detainer or order;
- the end of the standard sentence range for the current offense is greater than one year; and
- the offender has not received a DOSA more than once in the prior ten years before the current offense.

When determining eligibility, the court may order the Department of Corrections (DOC) to complete either a risk assessment report or a substance abuse disorder, or both. If the court determines the offender is eligible for the alternative, it must waive imposition of the standard-range sentence and impose a sentence consisting of either a prison-based alternative or a residential substance use disorder treatment-based alternative.

Under the prison-based alternative, the offender is sentenced to a term of incarceration equal to one-half the midpoint of the standard range or 12 months, whichever is greater, and one-half the midpoint of the standard range as a term of community custody. The incarceration and community custody terms must include substance abuse treatment.

Under the residential substance use disorder treatment-based alternative, the offender is sentenced to a term of community custody equal to one-half the midpoint of the standard sentence range or two years, whichever is greater, conditioned on the offender entering and remaining in residential substance use disorder treatment for a period set by the court between three and six months. The term of community custody must also include a condition to participate in treatment.

The court may bring an offender serving a DOSA back to court at any time to monitor progress or determine whether there have been violations of the conditions of sentence. If the offender has violated the conditions or has not satisfactorily progressed in treatment, the court may modify the conditions of community custody or impose other sanctions, including ordering the person to serve a term of total confinement within the standard range for the offense.

Partial Confinement. For certain offenders, a term of total confinement may be converted to

partial confinement. Partial confinement is confinement up to one year in a facility operated or contracted by the state or other unit of government, or in an approved residence, for a substantial portion of each day with the balance of the day spent in the community. Home detention is a program of partial confinement in which the offender is confined in a private residence 24 hours a day, unless otherwise authorized by the court or other supervising agency, and is subject to electronic monitoring. Work release is a program of partial confinement available to offenders who are employed or engaged as a student in a regular course of study at school.

During the period of partial confinement, an offender may be required to comply with crime-related prohibitions and affirmative conditions imposed by the court or DOC. If the offender violates the rules of the partial confinement program, the offender may be required to serve the remainder of the term in total confinement.

Community Custody. Community custody is a portion of an offender's sentence served in the community, subject to conditions imposed by the court and the DOC. Courts must order community custody for offenders convicted of certain crimes or in accordance with a sentencing alternative. If an offender violates the conditions of community custody, they may be subject to confinement or nonconfinement-based sanctions.

Summary of Engrossed Bill: Impaired Driving. The 10 year look back period for a person with three or more prior DUI or PC offenses is changed to a 15 year look-back, increasing the penalty from a gross misdemeanor to a felony offense for any person who has three or more prior DUI or PC offenses within that time.

Eligibility for the Impaired Driving Drug Offender Sentencing Alternative. An offender is eligible for the impaired driving DOSA if the offender is convicted of a felony DUI or felony PC and does not have a prior conviction for vehicular homicide, vehicular assault, felony DUI, or felony PC. A motion for an impaired driving DOSA may be made by the court, the offender, or the state if the midpoint of the standard sentence range is 26 months or less. If an offender has a higher midpoint, a joint agreement of the state and offender is required.

If the sentencing court determines the offender is eligible for an impaired driving DOSA, and that the alternative sentence is appropriate, the court must waive imposition of the standard sentence and:

- impose a prison-based DOSA if the low end of the standard range sentence is greater than 24 months; or
- impose a residential treatment-based alternative specific to impaired driving offenders if the low end of the standard sentence range is 24 months or less.

To assist the court in making its eligibility determination, the court may order DOC to complete a risk assessment report, a substance use disorder screening report, or both. If the court is considering imposing a sentence under the residential treatment-based alternative,

the court may also order DOC to examine the offender and assess:

- whether the offender suffers from a substance use disorder;
- whether effective treatment for the offender's substance use disorder is available from a provider that has been licensed or certified by the Department of Health (DOH); and
- whether the offender and the community will benefit from the use of the alternative sentence.

Impaired Driving Drug Offender Sentencing Alternative Requirements. When the court imposes a prison-based impaired driving DOSA, the court must impose a sentence equivalent to, and subject to the same requirements and restrictions as the traditional prison-based DOSA program already established in statute.

An offender who is eligible for a residential treatment-based alternative is sentenced to all of the following:

- if necessary, an indeterminate term of confinement of no more than 30 days in a county facility, to facilitate direct transfer to a residential substance use disorder treatment facility;
- treatment in a licensed or certified residential substance use disorder treatment program for a period set by the court up to six months, with treatment completion and continued care delivered in accordance with rules established by DOH—when establishing rules, DOH must consider criteria established by the American Society of Addiction Medicine criteria;
- 24 months of partial confinement to consist of 12 months work release followed by 12 months of home detention with electronic monitoring; and
- 12 months of community custody.

The court must impose treatment and other appropriate conditions during the periods of partial confinement and community custody. An offender may be required to pay \$30 per month while on community custody to offset the cost of monitoring for alcohol or controlled substances. Within available resources, DOC must make substance use disorder assessment and treatment services available to the offender.

Monitoring and Enforcement. When an offender is sentenced to the residential treatment-based alternative DOSA, the treatment provider must send the treatment plan to the court within 30 days of the offender's arrival to the residential treatment program. The court must schedule a progress hearing during the period of treatment and a treatment termination hearing for three months before the expiration of the term of community custody. Before these hearings, the treatment provider and DOC must submit written reports to the court and parties regarding compliance with treatment and monitoring requirements and recommendations regarding termination from treatment.

At the progress hearing or treatment termination hearing, the court may:

- authorize termination of community custody on the predetermined expiration date;
- continue the hearing, with or without modifying the conditions of partial confinement

- or community custody; or
- impose a term of total confinement equal to one-half the midpoint of the standard sentence range, followed by a term of community custody.

Under either the prison-based or residential-based program, the court may bring the offender into court at any time to evaluate treatment progress or determine whether there have been any violations of the conditions of sentence. If the offender violates conditions or is failing to make satisfactory treatment progress, the court may modify the conditions of partial confinement or community custody, or order the offender to serve a term of total confinement within the standard sentencing range of the offender's current offense.

An offender sentenced to total confinement after termination from an impaired driving DOSA is entitled to full credit for any time previously served under the impaired driving DOSA in total confinement or residential treatment, and 50 percent credit for any time previously served in partial confinement or community custody. An offender serving a term of community custody following termination from the impaired driving DOSA is granted no credit for time served in community custody prior to termination

Miscellaneous. Changes are made to clarify that the impaired driving DOSA is separate from the traditional DOSA that exists in current law, and references to the impaired driving DOSA are added to relevant portions of the Sentencing Reform Act.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony (Law & Justice): PRO: During the pandemic traffic is down 10 percent or more and yet impaired driving is up substantially. The need for this legislation is stronger than ever. King County, being the most populous county, has a lot of DUI cases. There is no one more dangerous to our community than a repeat DUI offender. This is not about their addiction, this is about their getting behind the wheel of a car. Traffic deaths rose during the pandemic. Washington prosecutors first duty is to the safety of the community. It is a shame when we can not prosecute a felony because it is outside the time limit. We want to hold these repeat DUI drivers accountable. The inevitable result of them continuing to drive impaired is death or injury.

CON: A fundamental aspect of a 10 versus 15 year look-back is fairness. Many DUI drivers have an addiction disorder. A misstep after 12 plus years after clean sober living puts an unfair burden on persons suffering from an addiction. The current 10 year look-back has the appropriate balance because it favors the rehabilitative aspect of the law.

Persons Testifying (Law & Justice): PRO: Senator Mike Padden, Prime Sponsor; John Snaza, Sheriff, Washington Association of Sheriffs and Police Chiefs; Amy Freedheim, King County Prosecutor's Office; Rich Weyrich, Skagit County Prosecuting Attorney; Miriam Norman, City of Seattle and Washington Traffic Safety Commission.

CON: Kristen Lange, Washington Defenders Association and the Washington Association of Criminal Defense Attorneys.

Persons Signed In To Testify But Not Testifying (Law & Justice): No one.

Staff Summary of Public Testimony (Ways & Means): PRO: This bill is a public safety matter. Almost everyone has been touched by the tragedy DUI-related accidents and this bill is a step in the right direction as it protects the public from repeat offenders. It is fiscally prudent to pass this bill since in prior years there have been \$930 million in losses related to impaired driving offenses. These include medical and job loss expenses. DUI recidivists are a drain on resources and the current short look-back period is not sufficient. Increased accountability will help bring down costs over time.

Persons Testifying (Ways & Means): PRO: Senator Mike Padden, Prime Sponsor; Sheriff John Snaza, Washington Association of Sheriffs and Police Chiefs; Amy Freedheim, King County Prosecutor's Office; Miriam Norman, City of Seattle/WTSC; Robert Colton, Washington State Office of the Attorney General.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.