HOUSE BILL REPORT

HB 2013

As Passed House
February 18, 1992

Title: An act relating to sobriety checkpoints.

Brief Description: Authorizing sobriety checkpoint programs.

Sponsor(s): Representatives Scott, Appelwick, May, Leonard, Ballard, Ferguson, Ludwig, Moyer, Morris, Jacobsen, Wang, Van Luven, Tate, Nealey, Brough, Rasmussen, Chandler and Holland.

Brief History:
Reported by House Committee on:
Judiciary, February 4, 1992, DP;
Passed House, February 18, 1992, 52-46.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: *Do pass.* Signed by 10 members: Representatives Appelwick, Chair; Paris, Assistant Ranking Minority Member; Broback; Forner; Mielke; H. Myers; Scott; D. Sommers; Tate; and Vance.

Minority Report: *Do not pass.* Signed by 5 members: Representatives Ludwig, Vice Chair; Padden, Ranking Minority Member; Belcher; Hargrove; and Riley.

Staff: Bill Perry (786-7123).

Background: Drunken driving continues to be a major problem throughout the nation. Thousands of lives and billions of dollars are lost each year to drunken driving. Among the programs tried in various jurisdictions to reduce drunken driving are "sobriety checkpoints."

Law enforcement agencies, including some in this state, have from time to time set up roadblocks to check motorists for drunkenness. When motorists are stopped they are observed for evidence of drinking and may ultimately be arrested for DWI. Supporters of these sobriety checkpoints argue that they are a minor inconvenience to the general public and are a highly visible deterrent to drunken driving regardless of how many arrests actually result from them. Opponents argue that checkpoints are intrusive to the privacy of the public

and that they typically result in the arrest of only about 1 percent of the motorists stopped.

These sobriety checkpoints have met with varying fates when challenged in court. In 1990, the United States Supreme Court upheld a Michigan State Police checkpoint program. The court held that the checkpoints did not violate the Fourth Amendment to the U.S. Constitution. However, in Washington State the state Supreme Court declared a city of Seattle sobriety checkpoint program to be unconstitutional under the state's constitution.

In Seattle v. Mesiani, 110 Wn.2d 454, (1988), the state Supreme Court held that Seattle's checkpoint program violated article 1, section 7 of the state constitution. The court declared, as it has in other decisions as well, that article 1, section 7 of the state constitution provides greater protection against searches and seizures than does the Fourth Amendment to the U.S. Constitution. Article 1, section 7 provides:

> No person shall be disturbed in his private affairs, or his home invaded, without authority of law.

The court reasoned that: first, a person in an automobile has a "privacy interest" that is protected by the constitution; second, sobriety checkpoint stops are "searches and seizures" within the meaning of the constitution; and third, sobriety checkpoints must have the "authority of law" required by article 1, section 7. The court held specifically that the Seattle program lacked authority of law. The Seattle program had been developed and authorized by the city police department. There was little explicit discussion in the majority opinion about just what "authority of law" means in article 1, section 7. However, the majority opinion strongly implies that for purposes of sobriety checkpoints, at least, the requirement for "authority of law" can be satisfied only by a judicially issued search warrant.

The concurring opinion in the case agrees that the Seattle program is unconstitutional, but would allow a properly drafted state law or local ordinance to provide the necessary "authority of law" under article 1, section 7. However, the concurrence expresses fear that the majority opinion requires judicial authorization for any program, thereby making it impossible to authorize sobriety checkpoints through statutes or ordinances. Under court rules, a judicial warrant may be issued to search for and seize evidence of a crime only if the court determines there is probable cause that the evidence will be seized.

Summary of Bill: The state patrol and local law enforcement agencies are authorized to establish sobriety checkpoints to assist in detecting and prosecuting drivers for DWI. Criteria are imposed for the conduct of checkpoints. Judicial review for compliance with the criteria, and judicial issuance of a search warrant are required.

Any agency conducting a sobriety checkpoint program must publish written procedures for operation of the program. The procedures must reflect at least the minimum privacy protections set out in the act. Those minimums include:

1. Training of personnel who are to conduct checkpoints;

2. Agency management selection of a checkpoint's location at least two weeks in advance based on objective data related to maximizing contact with DWI offenders;

3. Checkpoints may be conducted only between the hours of 9 p.m. and 3 a.m.;

4. Procedures must insure timely processing of drivers to minimize inconvenience;

5. Checkpoints must be supervised by officers with the rank of sergeant or above;

6. Only marked vehicles and uniformed officers may be used at a checkpoint;

7. Checkpoint locations must provide adequate lighting and off-road parking;

8. Adequate warning signs and flares must be used to alert drivers when they are approaching a checkpoint;

9. Stops of vehicles at a checkpoint must be completely random;

10. Checkpoints must be conducted only at fixed locations;

11. Officers who conduct checkpoints may ask certain questions and make observations related to DWI, driver's licenses, proof of insurance and use of seat belts. However, while arrests may be made for DWI, only warnings may be issued for failure to have a license or proof of insurance, or for failure to wear a seat belt. Officers are not allowed to make a visual check of the vehicle interior or of the passengers without specific probable cause.

12. The location and time of checkpoints must be publicized at least four days in advance of an operation.

A superior court judge must review each checkpoint program. If the judge finds that the program meets the minimum requirements of the act and will not be operated on an interstate highway or close to any other checkpoint, then the judge shall issue an area-wide search warrant.

There is a presumption of inadmissibility of any evidence obtained at a checkpoint other than evidence of DWI. To overcome this presumption, the prosecution must demonstrate by clear and convincing evidence that there was probable cause to support the search for and seizure of the other evidence. The "plain view" exception to the requirement for getting a search warrant may not be used for admitting such evidence.

Fiscal Note: Not requested.

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

Testimony For: The bill will increase the likelihood and the public perception of the likelihood of being caught for DWI. Checkpoints have been shown to be effective in other jurisdictions. The minimal inconvenience caused by checkpoints is outweighed by society's need to protect itself from drunk drivers.

Testimony Against: The bill allows unjustified intrusion into the privacy of innocent citizens and is clearly unconstitutional under the state constitution. Checkpoints are less efficient than emphasis patrols. Checkpoints can have a negative impact on a licensed establishment's business depending on the location of the checkpoint.

Witnesses: Abe Bergman, Washington State Medical Association (in favor); Robb Bruns, Washington Advocates for Highway and Auto Safety (in favor); John Moffat, Washington Association of Sheriffs and Police Chiefs (in favor); Jerry Sheehan, American Civil Liberties Union (opposed); and Bob Seeber and Kitt Hawkins, Restaurant Association of Washington State (opposed).