

HOUSE BILL REPORT

SSB 6047

As Reported By House Committee On:
Judiciary

Title: An act relating to crimes involving alcohol, drugs, or mental problems.

Brief Description: Revising provisions relating to crimes involving alcohol, drugs, or mental problems.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators A. Smith, Quigley and Oke).

Brief History:

Reported by House Committee on:
Judiciary, February 25, 1994, DPA.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended. Signed by 16 members: Representatives Appelwick, Chair; Johanson, Vice Chair; Padden, Ranking Minority Member; Ballasiotes, Assistant Ranking Minority Member; Campbell; Chappell; Eide; Forner; J. Kohl; Long; Morris; H. Myers; Riley; Schmidt; Scott and Tate.

Minority Report: Do not pass. Signed by 1 member: Representative Wineberry.

Staff: Bill Perry (786-7123).

Background: The crime of driving while under the influence (DUI) can be committed in either of two ways.

The first way the offense may be committed is by having a certain amount of alcohol in the breath or blood. A driver with more than this amount of alcohol in his or her system is said to have committed a "per se" violation. That is, the offense is purely a matter of alcohol concentration and is not related to the extent of impairment the driver may have. Under the Implied Consent Law, each licensed driver has agreed to take a test of his or her alcohol concentration (BAC) whenever a police officer has reasonable grounds to believe the driver has committed DUI. Refusal to take a BAC results in administrative loss of driving privileges, regardless of whether criminal charges are filed. This administrative sanction is designed to

encourage driver's to take the BAC test when asked to. In most DUI cases, BAC evidence is available and is presented to show a per se offense. A BAC of "0.10" or more is a per se violation. (The 0.10 means either 0.10 grams of alcohol per 210 liters of breath, or 0.10 percent by weight of alcohol in the blood. By virtue of the so-called partition ratio, these breath and blood amounts are taken to be equivalent.)

The second way the offense may be committed is by being under the influence. A person may be convicted of DUI without BAC evidence, or even with evidence of a BAC below the per se level, if the person's ability to drive is shown to have been impaired to some appreciable degree by alcohol.

The penalties for DUI include jail time, fines, and loss of driving privileges. Generally, these penalties include mandatory minimums that increase on successive convictions within a five-year period. Person's convicted of DUI are also required to undergo an assessment for alcohol problems, and may be ordered to receive treatment as part of the sentence.

The crime of DUI is a gross misdemeanor with a maximum penalty of one year in jail and a maximum fine of \$1,000 for a first offense and \$2,000 for a second or subsequent offense. The basic mandatory minimum penalties are as follows:

1. For a first offense:
 - a. One day in jail;
 - b. A \$250 fine;
 - c. Loss of license for 90 days or until age 19.

2. For a second offense:
 - a. Seven days in jail;
 - b. A \$500 fine;
 - c. Loss of license for one year.

3. For a third offense:
 - a. Seven days in jail;
 - b. A \$500 fine;
 - c. Loss of license for two years.

Fines imposed for DUI are also subject to certain surcharges. For example, a \$250 fine will be increased by at least the following: A public safety and education assessment of 90 percent, which adds \$225 to the basic minimum fine; and a BAC testing fee (scheduled to expire June 30, 1995) which adds another \$125 to the basic minimum fine. This makes the actual minimum fine for a first-time offender more than \$600.

Although the severity of these penalties increases for repeat offenders, the penalties do not vary with the level of a driver's BAC. Evidence indicates that higher BAC drivers are dramatically more likely to be involved in fatal crashes. A driver with a BAC of 0.15 is as much as 10 times more likely to be involved in a fatal crash than is a driver with a BAC of 0.10.

There is also substantial agreement among researchers that most if not all drivers are impaired to some extent at BAC levels below the current standard of 0.10. However, it is also true that the current criminal system to some extent already tends to ignore or simply cannot handle the lower level BAC cases. Evidence suggests that in some jurisdictions at least, DUI charges are rarely brought in cases of BAC readings at or near the lower end of the per se violation range. Furthermore, less than half of all drivers arrested for DUI are subsequently charged with and convicted of the offense. In a significant number of cases, defendants are granted deferred prosecutions. The charges in many other cases apparently are reduced to reckless driving as part of a plea bargain or are dropped altogether. The pressure caused by the number of arrests for DUI may exceed the resources that state and local governments have been willing or able to make available for prosecution, trial and incarceration. Because DUI is a crime and carries the possibility of incarceration as a punishment, a DUI defendant has a right to a jury trial. The cost to the public of one DUI jury trial has been estimated by the administrator for the courts to be more than \$3,800. A conviction for DUI also carries a mandatory day in jail, and many local jails are already overcrowded.

A person who commits a non-felony criminal offense, including DUI, may qualify for a deferred prosecution. To qualify, a defendant must show that the commission of the offense was the result of alcoholism which if left untreated is likely to cause the commission of similar offenses in the future. If a defendant is granted a deferral, and successfully completes the two years of treatment ordered under it, then the criminal charges are dropped. As a condition of entering a deferral, a person must agree that the police report of his or her arrest will be admitted as evidence in a prosecution should the person violate a condition of his or her deferral. A person is statutorily authorized only one deferral in any five-year period. Studies have indicated that DUI offenders who get treatment through a deferral are less likely to commit another DUI than are offenders who do not get a deferral. However, the program has received some criticism for failures to monitor participants carefully and for failures to prosecute participants when they violate terms of deferrals. Also, in

some instances drivers have been able to get multiple deferrals in violation of the five-year limit, apparently due at least in part to inadequate record keeping and information exchange between agencies and jurisdictions.

Summary of Amended Bill:

PART I.

DUI PENALTIES:

PENALTIES FOR FIRST-TIME OFFENDERS. A person who is not on probationary status and has had no DUI offense within the previous five years, and who has an alcohol concentration of at least 0.10 percent but less than 0.15 percent, is subject to the following penalties:

1. Jail time of between a mandatory minimum of one day and a maximum of one year;
2. A fine of between a mandatory minimum of \$350 and a maximum of \$5,000;
3. Driver's license suspension of between a mandatory minimum of 30 and a maximum of 120 days;
4. Probationary driver's license status for five years; and
5. Alcohol assessment and treatment.

A person who is not on probationary status and has had no DUI offense within the previous five years, and who has an alcohol concentration of at least 0.15 percent, or who is proven to be under the influence and for whom there is no alcohol concentration evidence because of the person's refusal to take a breathalyzer test, is subject to the following penalties:

1. Jail time of between a mandatory minimum of seven days and a maximum of one year;
2. A fine of between a mandatory minimum of \$500 and a maximum of \$5,000;
3. Driver's license suspension of between a mandatory minimum of 60 and a maximum of 180 days;
4. Probationary driver's license status for five years; and
5. Alcohol assessment and treatment.

CRIMINAL PENALTIES FOR OFFENDERS ON PROBATIONARY STATUS. A person whose license is on probationary status and whose alcohol concentration is at least 0.10 percent but less than 0.15 percent is subject to the following penalties:

1. Jail time of between a mandatory minimum of seven days and a maximum of one year;
2. A fine of between a mandatory minimum of \$600 and a maximum of \$5,000;
3. Driver's license suspension of between a mandatory minimum of 120 days and a maximum of one year;
4. Alcohol assessment and treatment;
5. Vehicle forfeiture; and
6. Ineligibility for an occupational license.

A person whose license is on probationary status and whose alcohol concentration is at least 0.15 percent, or who is under the influence and there is no evidence of blood alcohol concentration because of the person's refusal to take a breathalyzer test, is subject to the following penalties:

1. Jail time of between a mandatory minimum of seven days and a maximum of one year;
2. A fine of between a mandatory minimum of \$750 and a maximum of \$5,000;
3. Driver's license revocation of between a mandatory minimum of one year and a maximum of two years;
4. Alcohol assessment and treatment;
5. Vehicle forfeiture; and
6. Ineligibility for an occupational driver's license.

CRIMINAL PENALTIES FOR OFFENDERS WITH SUSPENDED OR REVOKED LICENSES. A person whose license has been suspended or revoked, or who has been convicted of DUI within the previous five years and who has as an alcohol concentration of at least 0.10 percent for an adult, or who is under the influence, is subject to the following penalties:

1. Jail time of between a mandatory minimum of 90 days and a maximum of one year;

2. A fine of between a mandatory minimum of \$750 and a maximum of \$5,000;
3. Driver's license revocation for two years;
4. Alcohol assessment and treatment;
5. Vehicle forfeiture; and
6. Ineligibility for an occupation driver's license.

PART II.

PROBATIONARY LICENSES. A probationary license will be issued to a driver when required under the penalty provisions of the DUI law, when a driver has been granted a deferred prosecution, and when a driver with an alcohol concentration of at least 0.10 is subject to administrative license action for the first time. The probationary license will be continued for five years, and will allow a police officer to determine that the person is on probationary status for a DUI violation. The fact that a person has a probationary license will not be available to insurance companies through the person's driving record.

PART III.

ALCOHOL PROBLEM ASSESSMENT AND TREATMENT. Two changes are made with respect to the providing of alcohol assessment and treatment for DUI offenders. First, the Department of Social and Health Services is directed to determine what phases of treatment must be afforded by any agency that offers treatment. Second, an agency that knowingly fails to report a driver's noncompliance with treatment is subject to a \$250 fine, and upon a third such failure in a year is subject to loss of its license to provide alcohol treatment.

PART IV.

ADMINISTRATIVE LICENSE SUSPENSION OR REVOCATION. The Department of Licensing will administratively suspend or revoke the driver's license of certain DUI offenders, and will administratively issue a probationary license to certain other offenders.

Administrative suspension or revocation applies to any minor driver with an alcohol concentration of 0.02 percent or higher, and to any second time adult DUI offender with an alcohol concentration of 0.10 percent or higher. A suspension or revocation will be stayed if the person is granted a deferred prosecution on criminal charges arising out of the same offense that triggered the administrative

action. Administrative issuance of a probationary license applies to an adult first-time offender with an alcohol concentration of 0.10 percent or higher.

PART V.

IMPLIED CONSENT. A refusal to take a breathalyzer test is made a crime punishable by a fine of up to \$5,000 and by up to a year in jail. The periods of administratively imposed license revocation for refusal are also increased.

PART VI.

DRIVING RECORDS. The Department of Licensing is directed to keep alcohol related driving records for 10 years instead of five. The department is also directed to mask certain information on a driver's record when an abstract of that record is provided to an insurance company. Masked information includes any record of a DUI infraction unless there is a subsequent DUI offense within five years, and any record of a deferred prosecution unless the person has been removed from the deferral for failure to comply with the conditions imposed as part of the deferral.

PART VII.

DEFERRED PROSECUTION. A person granted a deferred prosecution will be issued a five-year probationary license.

PART VIII.

VEHICULAR HOMICIDE. The seriousness level of the crime of vehicular homicide is raised from level eight to level nine when the homicide involves DUI. This change means that under the Sentencing Reform Act, the presumptive sentence for a first-time offender is three years in prison instead of two.

PART IX.

IGNITION INTERLOCK. The ignition interlock law is amended to allow the use of biological devices or other new technologies designed to prevent an intoxicated person from driving.

PARTS X. AND XI.

MISCELLANEOUS AND TECHNICAL PROVISIONS:

LAWSUITS AGAINST DRUNK DRIVERS. An intoxicated person who is injured by a drunk driver is not barred from recovering damages from the drunk driver unless the injured person's

own intoxication was a cause of the accident that resulted in the injury.

PURCHASE OF ALCOHOL. An intoxicated person who is significantly impaired by the consumption of alcohol is prohibited from purchasing alcohol.

PREEMPTION. The state completely preempts the entire field of DUI law. Any local laws that differ from the state law are invalidated.

Amended Bill Compared to Substitute Bill: The entire Senate Bill is stricken and replaced. Among the many differences between the amendment and the substitute bill are these: The substitute bill lowers the per se DUI minimum BAC level to 0.08 percent, while the amendment leaves that level at 0.10 percent. The amendment provides for the issuance of five-year probationary licenses for first-time DUI offenders, while the substitute does not. The amendment provides for per se administrative suspension for minors with BACs above 0.02 percent, while the substitute does not. The amendment provides for state preemption, while the substitute does not. The substitute imposes administrative license suspension on all DUI per se offenders, while the amendment imposes administrative issuance of a probationary license on first-time adult offenders, and administrative suspension on all other offenders. The substitute imposes specified mandatory conditions of probation on convicted DUI offenders and specifies punishment for violations of those conditions, while the amendment does not. The substitute requires specific additional stipulations by an offender granted a deferred prosecution, while the amendment does not.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect July 1, 1994.

Testimony For: With the current low rate of DUI convictions, the congestion in our courts, and the overcrowding in our jails, lowering the per se DUI standard without adding significant resources would be counterproductive. Research evidence shows clearly that it is the high BAC and repeat offender who are the real threats to highway safety. Drivers who are actually impaired can be charged and convicted of DUI regardless of their BAC level. Evidence also shows that getting drivers into treatment through deferred prosecution is much more effective in the long run than convicting them of DUI. It makes more sense to apply scarce resources where they will do the most good.

Evidence from other states is ambiguous at best as to whether lowering the per se level improves highway safety.

Testimony Against: The current system is conducive to abuse. Many drivers get multiple deferred prosecutions, or violate terms of a deferral with no consequences. Swift and certain punishment, especially for first-time offenders, is the most effective way to change behavior. All high BAC and repeat offenders begin as first-time offenders. Sending a strong message that the state is serious about DUI will deter people from driving while under the influence and will actually reduce the overcrowding problem. The evidence is clear that virtually all drivers are significantly impaired at BAC levels substantially below the current 0.10 percent. Having the official BAC level as high as 0.10 percent gives the message that it is alright to drive at just below that amount, when in fact it is very dangerous.

Witnesses: Tom McBride, Washington Association of Prosecuting Attorneys; Mark Sidran, Seattle City Attorney; Dan Davis, Washington State Patrol Troopers Association; Tim Erickson, Washington State Patrol; Steve Lind, Washington Traffic Safety Commission; Gene Andre, Mothers Against Drunk Drivers, Washington State Chairman; Adam Kline, Mothers Against Drunk Drivers; Peggy Carey Bishop, citizen; Linda Grant, Association of Alcoholism and Addictions Programs; Tom Armstrong, National Association of Addiction Treatment Programs; Ken Stark, Department of Social and Health Services, Division of Alcohol and Substance Abuse; Candace Lightner, American Beverage Association; Kit Hawkins, Washington Restaurant Association; Judge Robert McBeth, Washington State District and Municipal Court Judges Association; David Peach, Washington State Department of Transportation; and Tim Hoard, Washington Advocates of Highway and Auto Safety.