

SENATE BILL REPORT

SB 6047

AS REPORTED BY COMMITTEE ON TRANSPORTATION, FEBRUARY 7, 1994

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

SPONSORS: Senators A. Smith, Quigley and Oke

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 6047 be substituted therefor, and the substitute bill do pass and be referred to Committee on Transportation.

Signed by Senators A. Smith, Chairman; Ludwig, Vice Chairman; Hargrove, Nelson, Quigley, Roach, Schow and Spanel.

Staff: Lidia Mori (786-7755)

Hearing Dates: January 19, 1994; January 28, 1994

SENATE COMMITTEE ON TRANSPORTATION

Majority Report: That Substitute Senate Bill No. 6047 as recommended by Committee on Law & Justice be substituted therefor, and the substitute bill do pass.

Signed by Senators Loveland, Vice Chairman; Drew, Haugen, Nelson, Oke, Prentice, Prince, M. Rasmussen, Schow and Winsley.

Minority Report: Do not pass.

Signed by Senators Vognild, Chairman; Skratek, Vice Chairman; and Morton.

Staff: Jennifer Joly (786-7305)

Hearing Dates: February 7, 1994

BACKGROUND:

A person charged with driving while intoxicated who is allowed by a court to enter a deferred prosecution program avoids the possibility of being found guilty of the charge as long as he or she successfully completes the treatment program. A person is not eligible for a deferred prosecution program more than once in a five-year period. If a person on deferred prosecution fails to meet any of the requirements of the treatment plan, the treatment provider must notify the court, the prosecutor, and the person's attorney. The court will dismiss the pending charges if the person successfully completes the two-year treatment plan and does not have any convictions for similar offenses during the two-year period. It is believed that the terms and conditions of deferred

prosecution are often violated without the appropriate consequences ensuing.

Under current law it is illegal per se to drive or be in physical control of a motor vehicle with an alcohol concentration of .10 or more. A substantial body of research supports the conclusion that a majority of drivers are impaired when their blood alcohol concentration reaches .08 and that such impairment increases the likelihood of motor vehicle accidents resulting in injury or death.

Washington law allows a person charged with a DWI to keep his or her driver's license until the end of all legal proceedings, including appeals, due to automatic stay provisions in the statutes. There is concern that this provides a strong incentive for defendants to delay and litigate which in turn drives up caseloads and costs. Thirty-four states have adopted administrative license suspension, including Oregon and California. Administrative license suspension removes the license issue from the prosecution of the case.

SUMMARY:

Deferred Prosecution. A person is not eligible for a deferred prosecution program more than once. The treatment provider that prepares the case history and assessment must be different from the treatment provider that proposes to administer the treatment plan. If a person on deferred prosecution fails to perform any condition of the treatment plan, the provider must inform the probation department as well as the court, the prosecutor and the petitioner's attorney. If the provider fails to report the breach, the court, the prosecutor, or the probation department may notify DSHS of the treatment provider's delinquency. The court will dismiss charges pending against the petitioner if that person successfully completes the two-year treatment program and does not have any convictions for similar offenses for five years. If there are subsequent offenses within the five year period, the court must consider the deferred prosecution for enhancement purposes. The Department of Licensing (DOL) will expunge those entries relating to the petitioner ten years from the date the court approves entry of that person into deferred prosecution. As a prerequisite of granting a deferred prosecution request, the court is required to impose certain conditions including not driving without a valid license and proof of insurance, not driving while having any measurable alcohol in his or her breath or blood and submitting to a breath or blood test to determine alcohol concentration. Before granting deferred prosecution, the court must also impose mandatory supervision of the petitioner by a probation department or, if the jurisdiction lacks a probation department, an appropriate person or agency.

Administrative License Suspension. The DOL is authorized to administratively suspend the driving privileges of any person arrested for DWI who has a breath or blood alcohol reading of .08 or greater or who violates a condition of probation under

a deferred prosecution program. A law enforcement officer must have reasonable grounds to believe the driver was operating a motor vehicle while under the influence of alcohol. The officer must warn the driver that his or her driving privilege will be suspended, revoked or denied if the person refuses the breath or blood test or if it is administered and the result is .08 or greater within 2 hours after the driving. If the test is refused or failed, the officer must confiscate the person's Washington State license and issue a temporary license that is effective 12 hours after the time of arrest and is valid for 30 days from the date of arrest or until a hearing is held, whichever is sooner. The officer must provide the driver with written notice of the right to request a hearing to contest the suspension or revocation. If a hearing is desired, the driver needs to submit a written request within seven days from the date of arrest along with payment of a fee of \$100. Upon receipt of the report from the officer indicating the driver either submitted to the test, refused to submit to the test or the test was administered without the person's consent and the result was .08 or more, the DOL is to suspend, revoke, or deny the person's license, permit, or privilege to drive. The period of suspension or denial is 90 days for the first report within five years. If it is the second such report within five years, the revocation or denial will be for one year. Revocation or denial will be for two years for a third or subsequent report within five years. If the breath or blood test shows that the person had an alcohol concentration of .15 or more, the period of suspension, revocation or denial is increased by 90 days. If the person is accepted into a deferred prosecution program, the suspension, revocation or denial is postponed and canceled if the person successfully completes the program. A hearing contesting the suspension, revocation or denial is held before an administrative law judge and the person may be represented by counsel. License reinstatement fees are increased from \$50 to \$100 for certain violations.

Breath/Blood Alcohol Standards. The illegal level of breath and blood alcohol concentration is lowered from .10 to .08 for the offenses of driving while intoxicated and being in actual physical control of a motor vehicle while under the influence of intoxicating liquor. A person who is convicted of DWI and who had a breath or blood alcohol concentration of .15 or more or a person who refused to submit to the test will be imprisoned for not less than 48 hours nor more than one year and must pay a fine of not less than \$350 nor more than \$1000. A second conviction for DWI within a five-year period where the breath or blood concentration is .15 or more or a refusal to submit to the test results in imprisonment of not less than 14 days nor more than one year and a fine of not less than \$600 nor more than \$2000. A third conviction for DWI within a five-year period where the breath and blood concentration is .15 or less will result in imprisonment of not less than 90 days nor more than one year and a fine of not less than \$700 nor more than \$2000. A third conviction for DWI within a five-year period where the breath and blood concentration is .15 or more or where the person refused to submit to a breath/blood

test will result in imprisonment of not less than 180 days nor more than one year and a fine of not less than \$1000 nor more than \$2000. The court is required to impose conditions of probation including not driving without a valid license and proof of financial responsibility, not driving with an alcohol concentration of .04 or more, and not refusing to submit to a breath or blood test. For each violation of these conditions, the court will require the person to be imprisoned for not less than 30 days.

EFFECT OF PROPOSED SUBSTITUTE:

The treatment provider that prepares the case history and assessment may be the same treatment provider that proposes to administer the treatment plan for a person who is seeking deferred prosecution. Before entry of an order for deferred prosecution, the petitioner must execute a statement that contains, among other things, an acknowledgement and waiver of the right to testify, to call witnesses, to present evidence, and an acknowledgement and waiver of the right to a jury trial. The petitioner is required to divulge to the court whether he or she intends to use the proposed treatment program and deferred prosecution for any other offenses or cases.

A court must notify the Department of Licensing when it removes a person from deferred prosecution, if the charge for which the deferred prosecution was granted was a traffic infraction, misdemeanor or gross misdemeanor under the motor vehicles laws.

The period of suspension or denial is 90 days if the person has not had his or her license suspended, revoked or denied or has not been accepted for deferred prosecution five years prior to the date of arrest. If the person has had his or her license suspended, revoked or denied or has been accepted for deferred prosecution five years prior to the date of arrest, the revocation or denial will be for one year. Revocation or denial will be for two years in situations where the person has had his or her license suspended, revoked, or denied twice in the five years prior to the date of arrest.

A person who has had his or her license suspended through the administrative license suspension procedure may apply for an occupational license to commute to work.

The maximum fine for a conviction of driving while intoxicated or a conviction of being in physical control of a motor vehicle while intoxicated is raised to \$5,000.

A hearing contesting the suspension, revocation or denial is held before a hearing officer. At the discretion of the Department of Licensing, all or part of the hearing may be conducted by telephone or other electronic means.

Appropriation: none

Revenue: none

Fiscal Note: requested

Effective Date: Section 17 expires June 30, 1995 and section 18 takes effect June 30, 1995.

TESTIMONY FOR (Law & Justice):

There were 335 people killed last year by people driving while intoxicated. There needs to be meaningful consequences combined with education and prevention of this problem. In 1990, California adopted .08 as the legal blood alcohol standard and adopted administrative license suspension. Their DWI arrests dropped 30 percent; Washington's increased 18 percent.

TESTIMONY AGAINST (Law & Justice):

Treatment providers are already heavily regulated. The treatment agency doing the assessment should not be required to be different from the treatment facility that administers the treatment plan. Current bill would require an SR 22 for deferred prosecution which will harm deferred prosecution.

TESTIFIED (Law & Justice): PRO: Mark Sidran, Seattle city attorney; Judge Robert McBeth, WA State District Court Judges Assn.; Gene Andre, WA Mothers Against Drunk Driving; Tom McBride, WA Assn. of Prosecuting Attorneys; Dick Nuse, WA Traffic Safety Commission; CON: Linda Grant, WA Assn. of Alcoholism & Addictions Programs; Judge Farrow, Pierce County District Court No. 2; Ken Stark, ADASA; Doug Cowen

TESTIMONY FOR (Transportation):

There are cost savings associated with this legislation. First, during the administrative license suspension hearing, the police report of the arresting officer may be submitted as evidence, in lieu of live testimony; this has been upheld by the courts. Second, this legislation diminishes the costs to the lower courts who will no longer need to consider the driver's license issue during DWI hearings.

Since many municipalities have already adopted a .08 BAC, a uniform statewide standard should be promoted. If a jurisdiction so chooses, it need not prosecute BACs of below .10.

Judicial caseloads could be significantly diminished by concentrating enforcement efforts on first time offenders.

TESTIMONY AGAINST (Transportation):

Tough DWI laws are only tough insofar as there are available resources to implement them. Moving from a .10 to a .08 BAC would create an increased caseload of 15 to 20 percent. The public may not perceive the process afforded in administrative license suspension hearings as fair. Administrative license suspension may have a negative impact on the deferred prosecution program.

TESTIFIED (Transportation): PRO: Senator Adam Smith, prime sponsor; Tim Erickson, Washington State Patrol; Tim Hoad, Washington Advocates for Highway & Auto Safety; David Peach, WSDOT; Janice Stonestreet; CON: Ken Stark, Director of Alcohol/Substance Abuse Services, DSHS (Con, in part); Judge Robert McBeth, WA State District & Municipal Court Judges Association