

# HOUSE BILL REPORT

## ESSB 6166

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### As Reported By House Committee On:

Law & Justice  
Appropriations

**Title:** An act relating to penalties for driving under the influence.

**Brief Description:** Increasing penalties for drunk driving.

**Sponsors:** Senate Committee on Law & Justice (originally sponsored by Senators Rossi, Roach, Fairley, Goings, T. Sheldon, McCaslin, Strannigan, Zarelli, Long, Deccio, Oke, Rasmussen, Wood, Kline, Schow, Patterson, Swecker, Stevens, Haugen, McAuliffe, Kohl, Johnson and Benton).

### Brief History:

#### Committee Activity:

Law & Justice: 2/24/98, 2/26/98 [DPA];

Appropriations: 2/28/98 [DPA(LJ/APP)s].

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### HOUSE COMMITTEE ON LAW & JUSTICE

**Majority Report:** Do pass as amended. Signed by 13 members: Representatives Sheahan, Chairman; McDonald, Vice Chairman; Sterk, Vice Chairman; Costa, Ranking Minority Member; Constantine, Assistant Ranking Minority Member; Carrell; Cody; Kenney; Lambert; Lantz; Mulliken; Robertson and Sherstad.

**Staff:** Bill Perry (786-7123).

**Background:** Vehicular homicide is a class A felony. If the crime is committed by a driver who is under the influence of alcohol, it is a level IX felony under the Sentencing Reform Act (SRA) and carries a presumptive sentence for a first-time offender of 31 to 41 months in prison. Certain serious nonfelony traffic offenses count as criminal history for sentencing vehicular homicide under the SRA. A person convicted of vehicular homicide who has prior driving while under the influence (DUI) convictions, for example, will not be a first-time offender and will face a higher presumptive sentence.

The crime of DUI carries a number of mandatory minimum penalties, including mandatory jail sentences. These penalties increase when an offender has "prior offenses." Prior offenses for purposes of enhancing DUI penalties include not only

previous DUI convictions, but also previous deferred prosecutions and previous convictions for certain alcohol-related offenses.

**Summary of Amended Bill:** An individual convicted of vehicular homicide while under the influence of intoxicating liquor or any drug receives the standard sentence plus an enhancement of two years for every prior DUI conviction.

For the purpose of sentencing on a DUI, a previous conviction for second-degree reckless endangerment or reckless driving counts as a "prior offense" if it was originally charged as a DUI.

The court and the prosecutor are required to verify a DUI defendant's DUI-related driving history before the court grants a deferred prosecution, dismisses the charge, or sentences the defendant following a conviction. For courts fully participating in the Judicial Information System, the history must be current to within one judicial day. For other courts, the history must be current to within a week.

**Amended Bill Compared to Engrossed Substitute Bill:** The amended bill removes provisions that:

- (1) Eliminate the five-year "washout period" for counting the prior offenses that enhance DUI mandatory minimum sentences;
- (2) Limit a person to one deferred prosecution in a lifetime in connection with a DUI;
- (3) Direct the Department of Licensing to maintain the records of convictions or adjudications of DUI permanently; and
- (4) Authorize local governments to submit claims for verifiable reimbursement of costs incurred in implementing this act.

**Appropriation:** None.

**Fiscal Note:** Available. New fiscal note requested on February 19, 1998.

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

**Testimony For:** Drivers should only get one deferred prosecution in a lifetime. The current system is being badly abused. Failure to adequately check the driving history of offenders results in many problem drivers being repeatedly treated as first offenders.

**Testimony Against:** Deferred prosecution has proven to be one of the most useful tools we have for reducing DUI. This bill will remove one of the chief incentives people have for seeking treatment through a deferred prosecution.

**Testified:** Senator Rossi, prime sponsor; Keith Johnsen, citizen (pro); Senator Roach (pro); Senator Strannigan (pro); Karolyn Nunnallee, President, Mothers Against Drunk Drivers (pro); Don Lennon, President, Mothers Against Drunk Drivers, Washington Chapter (pro); Bill Hanson, Washington State Patrol Troopers Association (pro); Annette Sandberg, Chief, Washington State Patrol (pro); Tim Schellberg, Washington Association of Sheriffs and Police Chiefs (pro); Steve Lind, Washington Traffic Safety Commission (pro); Russ Hauge, Washington Association of Prosecuting Attorneys (pro); Kathy Gerke, Association of Washington Cities (pro, with concerns re fiscal impact); Mark Sidron, Seattle City Attorney (pro); Evan Simpson, Harborview Injury Prevention Center (pro); Pamela Simpson, citizen (pro); Cheryl Fox, citizen (pro); Mark Muenster, Washington Association of Criminal Defense Lawyers (con); and Linda Grant, Association of Alcoholism and Addiction Programs (con).

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** Do pass as amended by Committee on Law & Justice as such amendment is amended by Committee on Appropriations. Signed by 31 members: Representatives Huff, Chairman; Alexander, Vice Chairman; Clements, Vice Chairman; Wensman, Vice Chairman; H. Sommers, Ranking Minority Member; Doumit, Assistant Ranking Minority Member; Gombosky, Assistant Ranking Minority Member; Benson; Carlson; Chopp; Cody; Cooke; Crouse; Dyer; Grant; Keiser; Kenney; Kessler; Lambert; Linville; Lisk; Mastin; McMorris; Parlette; Poulsen; Regala; D. Schmidt; Sehlin; Sheahan; Talcott and Tokuda.

**Staff:** Dave Johnson (786-7154).

**Summary of Recommendation of Committee on Appropriations Compared to Recommendation of Committee on Law & Justice:** A new section was added which makes the bill null and void unless specific funding is provided in the Omnibus Appropriations Act by June 30, 1998.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Amended Bill:** Ninety days after adjournment of session in which bill is passed. However, the bill is null and void unless funded in the budget.

**Testimony For:** The bill makes several much needed changes and increases penalties in a responsible way. Many people plead DUI charges down to reckless driving and this allows those to now be counted as prior offenses. The Governor supports the sections of the bill which require that a defendant's criminal history be checked shortly before sentencing and which count second degree reckless endangerment and/or reckless driving as prior offenses if they were originally charged as a DUI.

**Testimony Against:** Local governments, while not opposed to the policy direction of the bill, are concerned that the state provide adequate resources to implement the DUI package.

**Testified:** Senator Rossi, prime sponsor; Dick VanWagenen, Governor's Policy Office (pro); Kathy Gerke, Association of Cities (concerns); and Mike Shaw, Association of Counties (concerns).