

HOUSE BILL REPORT

E2SSB 6293

As Reported By House Committee On:

Law & Justice
Appropriations

Title: An act relating to drunk driving.

Brief Description: Establishing penalties for drunk driving.

Sponsors: Senate Committee on Transportation (originally sponsored by Senators Benton, Roach, T. Sheldon, Rossi, McDonald and Oke).

Brief History:

Committee Activity:

Law & Justice: 2/24/98, 2/27/98 [DPA];
Appropriations: 2/28/98 [DPA(APP w/o LJ)s].

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: The drunk driving law contains a variety of penalties. Generally, mandatory fines, periods of jail time, and driver's license suspensions escalate with successive convictions for driving while under the influence (DUI). There is a five-year "washout" period for purposes of counting prior convictions. That is, a second DUI conviction only enhances penalties if it occurs within five years of a prior offense.

Penalties also vary depending on the breath or blood alcohol concentration (BAC) of the offender. BACs of 0.15 or more result in enhanced penalties. If there is no BAC reading available, penalties are also enhanced if the reason for the absence of a BAC reading was the offender's refusal to submit to a BAC test.

DUI is a gross misdemeanor with a maximum penalty of one year in jail and a \$5,000 fine. Mandatory minimum jail sentences begin with 24 hours in jail for an offender with

no priors and a BAC below 0.15, and escalate to 120 days in jail for an offender with two or more priors and a BAC of 0.15 or above.

Summary of Amended Bill: A new penalty is added to those that apply to DUI cases. Electronic home monitoring is optional in lieu of mandatory minimum jail time for first-time offenders. It is a mandatory addition to mandatory minimum jail time for second or third offenders. Mandatory periods of home monitoring range from 15 days in lieu of one day in jail for a first-time offender with a BAC below 0.15, to 150 days in addition to 120 days in jail for a third-time offender with a BAC of 0.15 or above.

Electronic home monitoring may include restrictions on the consumption of alcohol and the use of an alcohol detection device. The offender is to pay the cost of home monitoring as determined by the local jurisdiction in which the penalty is imposed.

DUI defendants are required to appear in person for arraignment following arrest or charging. In the case of an arrest, the defendant must appear on the next judicial day following arrest. In the case of a charge without an arrest, the defendant must appear within 14 days of the next judicial day following the charging. At the appearance, the court is to consider conditions of pretrial release.

Amended Bill Compared to Engrossed Second Substitute Bill: The engrossed second substitute bill makes electronic home monitoring a mandatory part of every DUI sentence. It includes increases in the fines charged for DUI. It provides for the "permanent" revocation of a driver's license on a third DUI. It creates a new crime of driving with a permanently revoked license that is a gross misdemeanor on a first offense and a class C felony on a second offense. It changes the washout period for first- and second-time offenders from five years to seven years, and for third-time offenders from five years to lifetime. It directs the Traffic Safety Commission to publicize the contents of the act. It also allows local governments to submit claims to the state for costs incurred in implementing mandatory provisions of the act.

The amended bill removes all of those provisions and adds the provisions making electronic monitoring an option for first-time offenders and mandatory for second- and third-time offenders. It also adds the provisions relating to mandatory court appearances within certain time limits and verification of criminal history before sentencing, dismissal, or granting of a deferred prosecution.

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: Electronic home monitoring can be an effective addition to the penalties for DUI. It is cost efficient since the offenders will pay for it. Increasing fines also will enhance local revenues. A serious repeat offender should lose his or her license permanently and should only be able to get it back if he or she cannot demonstrate rehabilitation. It is very important that new DUI laws be publicized if they are to have maximum effect.

Testimony Against: None.

Testified: Senator Benton, prime sponsor; 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, with amendment); 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); and Cheryl Fox, citizen (pro).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass as amended by Committee on Appropriations and without amendment by Committee on Law & Justice. 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 DUI penalty is created. Electronic home monitoring is optional in lieu of mandatory minimum jail time for first-time offenders. It is a mandatory addition to mandatory minimum jail time for second or third offenders. Mandatory periods of home monitoring range from 15 days in lieu of one day in jail for a first-time offender with a BAC below 0.15, to 120 days in addition to 90 days in jail for a third-time offender. A BAC level distinction in punishment for third-time offenders, which is found in the current law and in the amendment by the Committee on Law and Justice, is eliminated.

Electronic home monitoring may include restrictions on the consumption of alcohol and the use of an alcohol detection device. The offender is to pay the cost of home monitoring as determined by the local jurisdiction in which the penalty is imposed. This provision is the same as in the amendment by the Committee on Law and Justice.

New driver's license revocation provisions are created for third-time DUI offenders. These provisions also apply to a person who accumulates three or more offenses under the habitual traffic offenders law, if at least one of them is a DUI. Such an offender will have his or her license "permanently" revoked. A person who has had his or her license permanently revoked may, after 10 years, apply to the Department of Licensing for reinstatement of the license. In order to be reinstated, the applicant must present sufficient evidence of rehabilitation and must show by clear and convincing evidence that he or she has been sober for the previous 10 years. These provisions are not in the amendment by the Committee on Law and Justice.

A mandatory minimum 90 day jail sentence and \$1,000 fine also apply to a third-time DUI offender, and the five-year "washout" period for counting prior DUI offenses no longer applies to a third DUI. A third DUI at any time after two previous DUIs subjects an offender to these mandatory minimums as well as to the permanent license revocation provision. The amendment by the Committee on Law and Justice retains the five-year washout period and maintains a higher mandatory minimum jail sentence and fine for a third-time offender with a BAC of 0.15 or more.

A provision is added creating a new crime of driving with a permanently revoked license. A first offense is a gross misdemeanor with a mandatory minimum sentence of one year in jail. A second offense is a class C felony with a mandatory minimum sentence of seven years in prison.

A provision is added making the act null and void if specific funding for it is not provided in the appropriations 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 except for section 4 which has an emergency clause and takes effect immediately, and sections 1 through 3 which take effect November 1, 1998. However, the bill is null and void unless funded in the budget.

Testimony For: As the bill passed the Law and Justice Committee, it does not impose significant additional costs on local governments. This is a responsible way to increase sentences for repeat offenders without adversely affecting jail populations. Local governments are concerned about the total fiscal impact of the DUI bills.

Testimony Against: None.

Testified: Michael Shaw, Association of Counties (concerns); Kathy Gerke, Association of Cities (concerns); and Tim Schellberg, Washington Association of Sheriffs & Police Chiefs (pro).