
Judiciary Committee

HB 2324

Title: An act relating to driving or physical control of a vehicle while under the influence of intoxicating liquor or any drug.

Brief Description: Increasing penalties for driving or physical control while under the influence.

Sponsors: Representatives Shabro, McDonald, Roach, Bush and Moeller.

Brief Summary of Bill

- Makes a fifth DUI offense a class C felony.
- Ranks the new felony as a Level IV offense under the Sentencing Reform Act.
- Allows all prior DUI offenses to count as history regardless of how long ago they occurred.
- Double counts DUI offenses after the fifth offense, for purposes of an offender's criminal history score under the Sentencing Reform Act.

Hearing Date: 1/29/04

Staff: Bill Perry (786-7123).

Background:

DUI LAW. Drunk driving (DUI) is a gross misdemeanor. The maximum confinement sentence for a gross misdemeanor is one year in jail. The DUI law contains a complex system of mandatory minimum penalties that escalate based on several factors. These factors include the number of prior offenses and the concentration of alcohol (BAC) in the offender's blood or breath. The mandatory minimum jail sentences range from one day in jail (*or* 15 days of electronic home monitoring) for a first-time offender with a low BAC, to 120 days in jail (*and* 150 days of electronic home monitoring) for a third-time offender with a high BAC.

In this system of escalating mandatory minimum sentences, a "prior" offense counts if the arrest for that offense occurred within seven years of the arrest for the current offense. The term "offense" for these purposes has a technical meaning. Offenses that count as priors include not only DUI, but also two felonies (vehicular homicide and assault) and three misdemeanors. The three misdemeanors (negligent driving after having consumed alcohol, reckless driving, and reckless endangerment), however, only count as priors if they were the result of an amended charge that was originally filed as a DUI or vehicular homicide or assault. In addition, a deferred

prosecution granted to a person charged with DUI or negligent driving after having consumed alcohol counts as a prior offense. Even though successful completion of a deferred prosecution treatment program means charges are dropped, the deferral still counts as a prior offense under the DUI law. Deferred prosecutions are available only for non-felony crimes.

In addition to serving mandatory jail time, a DUI offender is subject to many other sanctions. These include fines, loss of driving privileges, alcohol assessment, and the mandatory use of an ignition interlock system on any vehicle the offender drives. Periods of required interlock use begin after the restoration of driving privileges and may run for as much as 10 years.

DUI FELONIES IN OTHER STATES. Many states have felony DUI laws. One report indicates that 41 states have some form of felony DUI law. Felony offenses are more serious than non-felony offenses in several ways. Maximum incarceration sentences for felonies are substantially longer. Other consequences of a felony conviction, such as loss of the right to possess a firearm and the social stigma associated with having a criminal background, are also generally more severe. However, it is difficult to make accurate comparisons between Washington's structured gross misdemeanor DUI law and these felony DUI laws in other states with respect to jail or prison time actually served by DUI offenders. Felony sentencing laws vary widely from state to state. Sentencing features such as indeterminate sentencing, judicial discretion, good-time early release, probation, and parole can result in the sentences imposed being dramatically different from the sentences served.

FELONY SENTENCING UNDER THE SENTENCING REFORM ACT. Washington's Sentencing Reform Act (SRA) is a presumptive and determinate felony sentencing system. This system is designed so that sentences will generally fall within a relatively narrow range for each offense. It is also designed so that it will be known with relative certainty at the time of sentencing how long an offender will be in prison.

The SRA is said to be "presumptive" because relatively narrow sentence ranges are set out in a statutory grid. It is presumed that most sentences will fall within the prescribed ranges, although exceptional sentences above or below the range are possible if there are aggravating or mitigating circumstances. A range is determined by two factors, an offender's prior criminal history and the seriousness of the current offense for which he or she is being sentenced. On the statutory grid, the presumptive range is determined by the intersection of the offender's history "score" and the seriousness level "ranking" of the current offense. An offender's score is determined by past convictions. Most convictions count as one point, but some may count as two. For instance, a prior vehicular homicide or assault counts as two points if the current conviction is a felony traffic offense. Felonies are "ranked" from Level I to Level XVI. A few prior non-felony crimes can count toward an offender's score in sentencing for a current felony. "Serious traffic" offenses are non-felony crimes that count when the current offense is a felony traffic offense. Serious traffic offenses include DUI, reckless driving, and hit-and-run driving. The SRA has "washout" periods that determine how long a prior conviction continues to count toward an offender's score. Class C felonies and serious traffic offenses wash out if the offender has spent five years without committing an offense since the date of his or her release from confinement.

Although the SRA is said to be "determinate" because at the time of sentencing the length of incarceration actually to be served is known with relative certainty, for some less serious offenses an offender may earn an early release of up to one-third off a sentence.

Although the SRA grid establishes sentencing ranges, in no case may a sentence be longer than the maximum allowed by statute for a particular class of felony. For class C felonies, this maximum is five years in prison.

All felonies that are ranked on the SRA grid are subject to these rules about determining a sentence. However, certain less serious offenses committed by a first-time offender may qualify for a waiver of the ordinary rules. For such offenses, the court has broad discretion in sentencing and may give jail sentences of up to 90 days and community service of up to one year.

COSTS OF INCARCERATION. Local jurisdictions bear the costs of incarceration when a sentence of one year or less is given. Because one year is the maximum sentence for a gross misdemeanor, all costs of incarcerating DUI offenders are borne by cities and counties. The state pays for the costs of incarceration for felony offenders who are sentenced to a term of confinement of more than one year.

Summary of Bill:

DUI becomes a class C felony when an offender has four or more prior offenses within seven years. Prior offenses that count for making a current DUI a felony include:

- DUI convictions;
- vehicular homicide convictions;
- vehicular assault convictions;
- deferred prosecutions for DUI or negligent driving after having consumed alcohol; and
- convictions for the following offenses, but only if originally charged as DUI:
 - negligent driving after having consumed alcohol;
 - reckless driving; and
 - reckless endangerment.

There are no washout periods for prior felony or non-felony DUI convictions, and prior DUI convictions may not be vacated. These prior convictions will always count toward an offender's criminal history. Once an offender has five or more prior DUI convictions, all prior DUI convictions will be double-counted in determining an offender's score.

Felony DUI is ranked at Level IV under the SRA. This ranking means that for a first-time felony DUI offender with no priors beyond those necessary to make the crime a felony (*i.e.*, four prior DUIs and no other criminal history), the presumptive sentence range would be 15 to 20 months in prison. For an offender with five or more DUI priors, the double counting provision means that the presumptive sentence will be five years, which is the maximum for a class C felony.

Felony DUI offenders are made ineligible for first-time offender waivers under the SRA.

Appropriation: None.

Fiscal Note: Requested on January 20, 2004.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.