

SENATE BILL REPORT

SHB 3055

As Reported By Senate Committee On:
Judiciary, February 20, 2004

Title: An act relating to admissibility of DUI tests.

Brief Description: Providing uniformity for admissibility of alcohol tests.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Holmquist, Carrell and O'Brien).

Brief History:

Committee Activity: Judiciary: 2/20/04 [DP].

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass.

Signed by Senators McCaslin, Chair; Esser, Vice Chair; Hargrove, Haugen, Johnson, Kline, Roach and Thibaudeau.

Staff: Lidia Mori (786-7755)

Background: Any person who operates a motor vehicle in this state is deemed to have given consent for a blood or breath alcohol concentration (BAC) test if he or she is arrested for driving while under the influence of alcohol or drugs (DUI). This provision in the state's motor vehicle code is known as the implied consent law.

A so-called "per se" violation of the DUI law consists of operating a motor vehicle while having a BAC of 0.08 or more for persons over the age of 21, or having a BAC of 0.02 or more for younger drivers. If an arresting officer has reasonable grounds to believe a driver has committed DUI, the officer may request that the driver take a BAC test. If the driver refuses the test, his or her driver's license will be administratively suspended or revoked by the Department of Licensing (DOL). If the driver submits to the test and fails it, i.e., registers above the legal BAC limit, the DOL will administratively suspend or revoke the license.

The arresting officer is required to inform the driver of his or her right to refuse the BAC test and of the right to have an independent test done. The officer is also required to warn the driver of some of the consequences of his or her decision regarding taking or refusing the test.

The implied consent law also allows the police to offer a blood test instead of a breath test under the following circumstances:

- the driver is incapable of providing a breath test due to physical injury, incapacity, or limitation;
- the driver is being treated in a hospital, clinic, doctor's office, emergency medical vehicle, ambulance, or other similar facility where a breath testing instrument is not present; and

- there are reasonable grounds to believe the driver is under the influence of drugs.

The implied consent law allows the police to administer a breath or blood test against the will of a driver under certain circumstances. Withdrawal of blood for a blood test may be done only by a physician, registered nurse or qualified technician. These circumstances include:

- the driver is unconscious;
- the driver is under arrest for vehicular assault or homicide; and
- the driver is under arrest for DUI and was involved in an accident in which another person suffered serious bodily injury.

The BAC test results, or the fact of refusal to take a test, are admissible in any civil or criminal action arising out of an alleged DUI incident.

Summary of Bill: Nothing in the implied consent law prevents a police officer from obtaining a search warrant in order to obtain breath or blood evidence samples.

The absence of a breath testing device is no longer necessary before a police officer may request a blood test in lieu of a breath test when a driver is being treated in a hospital, clinic, doctor's office, emergency medical vehicle, ambulance, or other similar facility.

The implied consent warning to be given at the time of arrest need only be "substantially" the same as the wording of the implied consent statute.

The category of person who may withdraw blood samples is expanded to include licensed practical nurses, nursing assistants, physician assistants, first responders, emergency medical technicians, health care assistants, or any trained technician.

Breath test results are admissible in a judicial or administrative proceeding if the test was performed by an instrument approved by the state toxicologist, and prima facie evidence is presented that:

- the test was done by a person authorized by the toxicologist;
- the person tested did not vomit, eat, drink, smoke or have any foreign substance in his or her mouth for at least 15 minutes before the test;
- the temperature of the test simulator solution was at the appropriate level as measured by a thermometer approved by the toxicologist;
- the internal standard test produced a "verified" message;
- two samples agreed to within a specified limit;
- the simulator test was within a specified range; and
- blank tests showed a .000 result.

A prima facie showing is one that provides evidence "of sufficient circumstances that would support a logical and reasonable inference of the facts sought to be proved." Any prosecution evidence regarding the foundational facts of a breath test will be assumed to be true, and all reasonable inferences from the evidence are to be construed in a light favorable to the prosecution.

Defense challenges to the reliability or accuracy of a breath test may not be used to prevent the introduction of the evidence once the prosecution has made a prima facie case. However,

evidence presented by the defense in making such a challenge may be considered by the trier of fact in determining the weight to be given to the breath test results.

Appropriation: None.

Fiscal Note: Requested on February 19, 2004.

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

Testimony For: In all the DUI cases that have been brought to the Supreme Court on suppression of blood/breath alcohol concentration tests (BAC), the Supreme Court has consistently said the BAC tests should not have been suppressed. However, it takes two years to reach the Supreme Court and during that time, the cases are on hold. This bill will have a minimal financial impact. With this bill, the defense can still bring their issues about a BAC test to the jury. This bill will provide uniformity as to admissibility of BAC tests. Right now, results are inconsistent across the state. Some counties suppress them, others do not.

Testimony Against: This bill will cause more trials and they will become battles of experts. There will be a catastrophic impact on courts of limited jurisdiction. It will cause more trials in cases where the BAC test was questionable.

Testified: Representative Holmquist, prime sponsor; Michael Finkle, Seattle City Attorney's Office (pro); Rod Gullberg, WA State Patrol (pro); Teddy Chow, Grant County Prosecutor's Office (pro); William Kirk, WA Assn. of Criminal Defense Lawyers (con); Pam Loginsky, WA Assn. of Prosecuting Attorneys (pro).