

# SENATE BILL REPORT

## HB 3317

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As Reported By Senate Committee On:  
Judiciary, March 6, 2006

**Title:** An act relating to making it a felony to drive or be in physical control of a vehicle while under the influence of intoxicating liquor or any drug.

**Brief Description:** Changing provisions relating to driving under the influence of intoxicating liquor or any drug.

**Sponsors:** Representatives Ahern, Lantz, Lovick, Darneille, Chase, Williams, Hunter, Clibborn, Kilmer, Hudgins, Ericks, Simpson, Conway, Takko and Morrell.

**Brief History:** Passed House: 2/28/06, 97-0.

**Committee Activity:** Judiciary: 3/6/06 [DPA-WM]

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### SENATE COMMITTEE ON JUDICIARY

**Majority Report:** Do pass as amended and be referred to Committee on Ways & Means.

Signed by Senators Kline, Chair; Weinstein, Vice Chair; Johnson, Ranking Minority Member; Carrell, Esser, Hargrove, McCaslin and Rasmussen.

**Staff:** Lidia Mori (786-7755)

**Background:** Drunk driving (DUI) is a gross misdemeanor. The maximum term of confinement for a gross misdemeanor is one year in jail. The DUI law contains a complex system of mandatory minimum penalties that escalate based on the number of prior offenses and the concentration of alcohol (BAC) in the offender's blood or breath. A "prior offense" counts to increase an offender's sentence under the DUI laws if the arrest for that offense occurred within seven years of the arrest for the current offense. "Prior offenses" include convictions for: (a) DUI; (b) vehicular homicide and vehicular assault if either was committed while under the influence; (c) negligent driving after having consumed alcohol ("wet neg"), reckless driving, and reckless endangerment if the original charge was DUI; and (d) any equivalent local DUI ordinance or out-of-state law. In addition, a deferred prosecution for DUI or "wet neg" counts as a prior offense even if the charges are dropped after successful completion of the deferred prosecution treatment program.

In addition to serving mandatory jail time, a DUI offender is subject to other sanctions that include alcohol assessment, the mandatory use of an ignition interlock system on any vehicle the offender drives, and probation. An adult who is convicted of a felony is sentenced under the provisions of the Sentencing Reform Act (SRA). The SRA has a sentencing grid in statute that provides a standard sentence range based on the seriousness level of the current offense and the offender's prior criminal history score. Unless the sentencing judge imposes an exceptional sentence upward or downward, the sentencing judge will sentence the offender to a period of confinement within that standard range. However, 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.

Felonies are "ranked" in the SRA from Level I (low) to Level XVI (high). An offender's criminal history score ranges from 0 to 9+ and is calculated based on numerous factors, including the number of prior felony convictions and the relationship between those prior convictions and the current offense. A few prior non-felony crimes can count toward an offender's score in sentencing for a current felony. "Serious traffic" offenses, which include DUI, are non-felony crimes that count when the current offense is a felony traffic offense. Prior felony traffic offenses, which include vehicular assault and vehicular homicide, count double when the current offense is also a felony traffic offense.

The SRA has "wash out" 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. The SRA also has sentencing alternatives for some types of offenders, such as the first-time offender waiver program, drug offender sentencing alternative (DOSA), and work ethic camp. At the time of sentencing, the court also imposes a term of community custody for certain offenders, including those offenders who have been convicted of an offense categorized as a "Crime Against Persons." Conditions of community custody and levels of supervision are based on risk. The court has discretion when setting the range of community custody, but generally, the range for a person convicted of a "Crime Against Persons" will be between nine to 18 months. Under the SRA, an offender may earn an early release of up to 50 percent off a sentence for less serious offenses. For offenses categorized as "Crimes Against Persons" and other serious offenses, an offender may receive earned early release time up to one-third off.

The Juvenile Justice Act (Act) governs the disposition (or sentencing) of juvenile offenders. The Act contains a disposition grid with presumptive sanctions based on the seriousness of the offense and prior criminal history. Offenses are "categorized" between Category E (least serious) through Category A+ (most serious). A DUI is categorized as a D offense. A juvenile adjudicated of DUI who has no prior criminal history will typically receive local sanctions, meaning the court may impose one or all of the following: 0-30 days in confinement in a local juvenile detention facility; 0-12 months of community supervision; 0-150 hours of community restitution; and/or \$0-\$500 fine. More serious offenders are subject to confinement in the state juvenile facility. The Juvenile Justice Act provides disposition alternatives that give courts discretion to suspend the juvenile's disposition and impose conditions. Some of those alternatives include the suspended disposition alternative, the chemical dependency disposition alternative, and the mental health disposition alternative.

**Summary of Amended Bill:** A DUI conviction is a class C felony if the offender: (a) has four or more prior offenses within seven years; or (b) has ever been convicted of vehicular homicide while under the influence of alcohol or drugs or vehicular assault while under the influence of alcohol or drugs. Felony DUI is a Level V offense. This means a DUI offender with four prior DUIs will receive a presumptive sentence range of 22 - 29 months. Felony DUI is categorized as a "Crime Against Persons." A felony DUI offender is eligible for earned early release not to exceed one-third of his or her sentence and community custody provisions apply. An offender is not eligible for the first time offender waiver program, DOSA, or work

ethic camp. The court must order the offender to undergo treatment during incarceration. The offender shall be liable for the costs of treatment unless the court finds the offender indigent and no third-party insurance is available. The license suspension and ignition interlock provisions under the misdemeanor DUI laws apply.

The provisions under the SRA related to "wash out" periods and vacation of records are amended to include the seven year period in which "prior offenses" under the DUI laws are counted.

Under the Juvenile Justice Act, felony DUI is made a Category B+ offense. This means a juvenile with four prior DUI adjudications who is adjudicated of another DUI will receive a presumptive disposition range of 15 - 36 weeks in a state juvenile facility.

**Amended Bill Compared to Original Bill:** Language in the bill is corrected to reflect that if the offender is a juvenile, he or she will be punished according to RCW 13.40. The "wash out" periods under the sentencing reform act and the current DUI laws are clarified as they apply to felony DUI convictions.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

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

**Testimony For:** Washington is only one of three states that does not have a felony DUI law. There were 222 deaths from people driving under the influence of alcohol in 2004. The purpose of government is protection of its citizens and with this bill, we are protecting citizens against drunk driving. This legislation is directed at the chronic drunk driver. We will not need to build a new prison but we do need to build capacity. While these offenders are in prison and in our control, we need to provide treatment. Experts estimate that they need 11 to 12 months of treatment. The only way to deter a habitual drunk driver is to take him or her off the road and provide treatment. Word will get around to the DUI offenders in bars and other drinking establishments that they are looking at a longer incarceration time if they drink and drive. This is a huge issue to county sheriffs. These offenders are a low risk when sober and they won't require a maximum security prison. Drunk drivers are a threat to police officers on the road as well as to the general public. For a juvenile to get a DUI felony, he or she still has to have had four prior DUI adjudications.

**Testimony Against:** None.

**Who Testified:** PRO: Representative Ahern, prime sponsor; Representative Lantz; Senator Brandland; Jim Reiersen, Deputy Prosecutor; Karen Minahan, Mothers Against Drunk Drivers; Don Pierce, Washington Association of Sheriffs and Police Chiefs; Tom McBride, Washington Association of Prosecuting Attorneys; Anita Kronuall, citizen.