

# HOUSE BILL REPORT

## SHB 1167

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**As Passed House:**  
March 5, 2011

**Title:** An act relating to driving or being in physical control of a motor vehicle while under the influence of alcohol or drugs.

**Brief Description:** Expanding provisions relating to driving or being in physical control of a motor vehicle while under the influence of alcohol or drugs.

**Sponsors:** House Committee on Judiciary (originally sponsored by Representatives Liias, Goodman, Probst, Rolfes, Moscoso, Roberts, Fitzgibbon, Billig, Miloscia and Maxwell).

**Brief History:**

**Committee Activity:**

Judiciary: 2/14/11, 2/17/11 [DPS];  
Transportation: 2/23/11, 2/24/11 [DPS(JUDI)].

**Brief Summary of Substitute Bill**

- Explicitly authorizes courts to establish specialty courts for persons convicted of driving under the influence of intoxicating liquor or drugs (DUI courts).
- Increases the fee imposed on persons convicted of DUI, vehicular homicide, or vehicular assault.
- Authorizes the Washington Traffic Safety Commission to establish victim impact panel registries with minimum standards for the panels.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Chandler, Eddy, Frockt, Kirby, Klippert, Nealey, Orwall, Rivers and Roberts.

**Staff:** Trudes Tango (786-7384).

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### HOUSE COMMITTEE ON TRANSPORTATION

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Majority Report:** The substitute bill by Committee on Judiciary be substituted therefor and the substitute bill do pass. Signed by 27 members: Representatives Clibborn, Chair; Billig, Vice Chair; Liias, Vice Chair; Armstrong, Ranking Minority Member; Hargrove, Assistant Ranking Minority Member; Angel, Asay, Eddy, Finn, Fitzgibbon, Jinkins, Johnson, Klippert, Kristiansen, Ladenburg, McCune, Moeller, Moscoso, Overstreet, Reykdal, Rivers, Rolfes, Ryu, Shea, Takko, Upthegrove and Zeiger.

**Staff:** Wendy Malkin (786-7114).

### **Background:**

#### Specialty Courts.

A specialty or therapeutic court, which may be created within superior court, often requires the offender to undergo treatment, counseling, and educational programs. Some superior courts have established drug courts and mental health courts. At least five counties have specialty courts for offenders convicted of driving under the influence of intoxicating liquor or any drug (DUI).

#### DUI Victim Impact Panels.

A person convicted of DUI is subject to criminal sanctions, including monetary penalties, mandatory jail time, and the suspension of the person's driver's license. In addition, a person convicted of DUI, or granted a deferred prosecution on a DUI charge, may be ordered to attend an educational program that focuses on "the emotional, physical, and financial suffering of victims injured by persons convicted of DUI." There is nothing in statute that requires victim impact panels (VIP) to be conducted by certain entities or organizations. Some courts, such as King County District Court, have adopted minimum standards for VIPs.

#### Alcohol Assessments.

Generally, persons convicted of DUI must undergo court-ordered alcohol assessment. A diagnostic evaluation and treatment recommendation must be prepared under the direction of the court. The statute does not require that a copy of the report be sent to the court.

#### Fees Imposed on Offenders.

A fee of \$125 is imposed on persons convicted, sentenced to a lesser charge, or given a deferred prosecution, as a result of an arrest for DUI, vehicular homicide, or vehicular assault. The stated purpose of the fee is to fund the state toxicology laboratory and the Washington State Patrol for grants and activities to increase the conviction rate and decrease the number of DUIs. The court may suspend all or part of the fee if it finds that the offender is not able to pay.

The clerk of the court collects the fee and distributes it as follows:

- 40 percent of the fee is distributed between the state and city or county government, based on existing statutes dividing the noninterest portion of fees collected by courts of limited jurisdiction and superior courts;
- 60 percent of the fee is forwarded to the State Treasurer to be deposited in the following ways: (a) 15 percent in the Death Investigations Account to fund the Washington State Toxicology Laboratory's blood alcohol concentration testing

programs; and (b) 85 percent in the State Patrol Highway Account to fund activities to increase the conviction rate and decrease the incidences of DUI.

### **Summary of Substitute Bill:**

#### DUI Courts.

Counties may establish and operate DUI courts for nonviolent offenders. A jurisdiction seeking state funds for a DUI court must first exhaust all federal funding that is available to support a DUI court and provide a dollar-for-dollar match of state moneys. State money must be used to supplement, not supplant, other funds. The DUI courts already in existence as of January 1, 2011, are not required to match state funds until June 30, 2014.

The DUI courts established under the bill must have minimum requirements for participation of offenders. The minimum requirements must include that:

- the offender would benefit from alcohol treatment;
- the offender has not previously been convicted of a serious violent offense or sex offense, vehicular homicide, vehicular assault, or an equivalent out-of-state offense; and
- the offender is not currently charged with certain enumerated offenses, or an offense during which the defendant used a firearm, or an offense during which the defendant caused substantial or great bodily harm or death to another person.

#### Victim Impact Panels.

The Washington Traffic Safety Commission (WTSC) may develop and maintain a registry of qualified VIPs and may work with VIP organizations to develop the registry. When a court requires an offender to attend a VIP, the court may refer the offender to a VIP listed on the registry. To be listed on the registry, the VIP:

- must address the effects of impaired driving and address alternatives to drinking and driving;
- should strive to have at least two different speakers, one of whom is a victim survivor, to present their stories in person for at least 60 minutes;
- must have policies and procedures to recruit, screen, train, and provide feedback and support to the panelists;
- must charge a reasonable fee to persons required to attend, unless ordered otherwise by the court;
- must have a policy to prohibit admittance of anyone under the influence or anyone whose actions or behavior are inappropriate;
- must maintain attendance records for at least five years;
- must make reasonable efforts to use a facility that meets standards established by the Americans with Disabilities Act;
- may provide referral information to other community services; and
- must have a designated facilitator responsible for communicating with the courts and probation departments regarding attendance and responsible for compliance with the minimum standards.

#### Fees Imposed on Offenders.

The \$125 fee imposed on offenders is increased to \$200. Of the total amount, \$175 must be distributed in the same manner as the current fee is distributed, and \$25 of the fee must be

deposited into the Highway Safety Account to be used solely for funding WTSC grants to reduce statewide collisions caused by DUI.

Grants awarded may be for projects that encourage collaboration with other community, governmental, and private organizations, and that use innovative approaches based on best practices or proven strategies. Grant recipients may include DUI courts and jurisdictions implementing victim impact panel registries.

Alcohol Assessment Report.

A copy of the offender's diagnostic evaluation and treatment report must be forwarded to the court.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony (Judiciary):**

(In support) Many bills focus on penalties, but there should also be focus on treating people with alcohol problems so they do not reoffend. The DUI courts are being used in some districts and are successful. The DUI courts are one of the top proven strategies in addressing DUI because they require a collaborative team process. The WTSC helped establish the existing DUI courts through the use of federal funds. The bill dedicates some of the increased funds for prevention. Victim impact panels are an important tool and the bill's minimum standards for VIPs mirror King County's standards. Using VIPs and requiring alcohol assessments result in many offenders finally understanding the problem. Victim impact panels get a good reception when they speak to groups of people who have committed DUI.

(With concerns) There is concern how the money from the increased fee will reach the WTSC through the State Patrol Highway Account. There is another account that pays for part of the costs of the Target Zero Task Force, and that task force manages a VIP. Some of the provisions for VIPs in the bill are a concern. Allowing any person to complain to the court about a VIP opens up the possibility that a person who is already angry for having to attend a VIP can file frivolous complaints. It is not the duty of the courts to set up a registry, monitor compliance, take complaints, and regulate VIPs. That is more of a licensing function.

(Opposed) None.

**Staff Summary of Public Testimony (Transportation):**

(In support) This bill will bolster current efforts to reduce DUIs. The fee increase will be distributed to a variety of prevention efforts. The bill looks at effective prevention tools. It explicitly authorizes DUI courts, which are shown to be more effective than traditional

courts. It also sets standards for victim impact panels. The bill helps toward our work to reach zero deaths on our roads. The revenue for the Commission will allow the Commission to provide grants to DUI courts to help establish the courts.

(Neutral) The Commission is in the grant-giving business; it is the majority of the Commission's work. Target zero is the strategic highway plan for the state, not just for the Commission. The work of the Commission is to change behavior to make our highways safe. The Commission does its work by following the priorities in the plan. Reducing impaired driving is the number one priority. The Commission already knows of proven strategies, such as DUI courts. The Commission has already helped launch four DUI courts by giving the courts initial funding. The DUI courts work by removing the adversarial process from the equation. Everyone works together to help the person overcome addiction.

(Opposed) None.

**Persons Testifying (Judiciary):** (In support) Representative Liias, prime sponsor; George Fraser; Karen Minahan; and Steve Lind, Washington Traffic Safety Commission.

(With concerns) Sam Meyer, District and Municipal Court Judges Association.

**Persons Testifying (Transportation):** (In support) Representative Liias, prime sponsor.

(Neutral) Steve Lind, Washington Traffic Safety Commission.

**Persons Signed In To Testify But Not Testifying (Judiciary):** None.

**Persons Signed In To Testify But Not Testifying (Transportation):** None.