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## Judiciary Committee

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### HB 1789

**Title:** An act relating to accountability for persons driving under the influence of alcohol or drugs.

**Brief Description:** Addressing accountability for persons driving or being in physical control of a vehicle while under the influence of intoxicating liquor or any drug.

**Sponsors:** Representatives Goodman, Pedersen, Roberts and Miloscia.

#### Brief Summary of Bill

- Requires a person convicted of negligent driving in the first degree or reckless driving to install an ignition interlock device.
- Allows a person charged with certain DUI-related misdemeanors to be eligible for two deferred prosecutions.
- Changes the definition of "prior offenses," expands the felony DUI law, and makes other changes to the statutes regarding alcohol-related traffic offenses.

**Hearing Date:** 2/14/11

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

#### **Background:**

##### Gross Misdemeanor DUI.

A person commits driving under the influence of intoxicating liquor or any drug (DUI) in two ways:

- if the person drives a vehicle and has, within two hours of driving, a blood or breath alcohol concentration of .08 or higher (per se violation); or
- if the person drives and is under the influence of or affected by intoxicating liquor or any drug (actual impairment).

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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.*

The misdemeanor DUI law contains a complex system of mandatory minimum penalties that escalate based on the number of prior offenses the offender has within seven years and the offender's BAC for the current offense.

#### Prior Offenses.

"Prior offenses " include convictions for: (a) DUI; (b) vehicular homicide and vehicular assault if either was committed while under the influence of alcohol or drugs; (c) negligent driving in the first degree, reckless driving and reckless endangerment, if the original charge was DUI, vehicular homicide, or vehicular assault; and (d) an equivalent out-of-state offense. In addition, a deferred prosecution for DUI or negligent driving in the first degree counts as a prior offense.

#### Felony DUI.

A conviction for DUI is a Class C Felony if the driver has: (a) four or more DUI-related prior offenses within 10 years; or (b) any prior conviction of a DUI-related vehicular homicide or vehicular assault, or a comparable out-of-state conviction. Penalties for felony DUI are governed by the Sentencing Reform Act, and the driver's presumptive sentence depends, in part, on his or her "offender score" (based on prior criminal history). A DUI offender with four prior misdemeanor DUIs will receive a presumptive sentence range of 22 to 29 months.

#### License Suspension and Ignition Interlock Requirements.

Regardless of whether a driver is charged with or convicted of DUI, the Department of Licensing will suspend a person's drivers license if the driver's BAC is .08 or higher or if the driver refused to take the BAC. Depending on the circumstances, an administrative license suspension can range from 90-days to two years. Therefore, it is possible for a person to first have his or her license suspended under an administrative suspension and then have his or her license suspended based on a criminal conviction for the same incident.

After the suspension period expires and the person is eligible to reinstate his or her regular license, the person must drive with an ignition interlock device for either one year, five years, or 10 years, depending on whether the person was previously restricted.

#### Deferred Prosecution.

A person charged with certain misdemeanors and gross misdemeanors, including DUI, in district or municipal court may petition the court for a deferred prosecution. A deferred prosecution program requires the person to, among other things, undergo treatment in a two-year program. The court will dismiss the charges three years after the completion of the treatment program. Persons charged with a non-felony traffic offense are not eligible for a deferred prosecution more than once.

### **Summary of Bill:**

#### Deferred Prosecution.

A person charged with DUI, negligent driving in the first degree, or reckless driving involving alcohol or drugs is eligible for two deferred prosecutions.

#### Prior Offenses.

The definition of prior offenses is expanded to include a conviction for vehicular assault or vehicular homicide, based on recklessness or the disregard for the safety of others, if the original

charge was filed as a vehicular assault or vehicular homicide, based on being under the influence of alcohol or drugs.

Felony DUI.

A conviction for DUI is a felony DUI conviction if the person has ever previously been convicted of felony DUI in Washington.

Ignition Interlock Requirements.

A person convicted of negligent driving in the first degree must install an ignition interlock device on all vehicles operated by the person for six months, subject to the compliance-based removal provision. This six month ignition interlock requirement also applies if a person is convicted of reckless driving, if the charge was originally filed as DUI, negligent driving in the first degree, vehicular assault or vehicular homicide.

When calculating the time a person is required to have an IID installed, the DOL must give a person day-for-day credit for the time period, starting from the date of the incident, during which the person kept an IID installed.

Other Provisions.

When a court imposes alcohol monitoring for a person under the provisions governing ignition interlocks licenses, the monitoring must be for the period of time of the mandatory license suspension.

Language is added to the sentence enhancement for vehicular homicide to make it explicit that the enhancement is mandatory, must be served in total confinement, and must run consecutively to all other sentencing provisions.

**Appropriation:** None.

**Fiscal Note:** Available.

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