

HOUSE BILL REPORT

HB 1789

As Reported by House Committee On:
Judiciary

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 History:

Committee Activity:

Judiciary: 2/14/11, 2/17/11 [DPS].

Brief Summary of Substitute Bill

- Requires a person convicted of reckless driving, under certain circumstances, or negligent driving in the first degree to install an ignition interlock device.
- Provides that a person charged with certain misdemeanors related to driving under the influence of intoxicating liquor or any drug (DUI) may not receive a deferred prosecution more than once within a 10-year period and not more than twice total.
- Changes the definition of "prior offenses," expands the felony DUI law, and makes other changes to the statutes regarding alcohol-related traffic offenses.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Shea, Assistant Ranking Minority Member; Chandler, Frockt, Kirby, Klippert, Nealey, Orwall, Rivers and Roberts.

Minority Report: Do not pass. Signed by 2 members: Representatives Rodne, Ranking Minority Member; Eddy.

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.

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 (BAC) 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).

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 (DOL) 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 (IID) 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 Substitute Bill:

Deferred Prosecution.

A person charged with DUI, negligent driving in the first degree, or reckless driving involving alcohol or drugs is not eligible for a deferred prosecution more than once within a 10-year period, and no more than two times total.

Prior Offenses.

The definition of prior offenses is expanded to include a conviction for vehicular assault or vehicular homicide, based on driving in a reckless manner or driving with 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.

The offense of DUI becomes a felony DUI 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, when 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 sentencing 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.

Substitute Bill Compared to Original Bill:

The original bill allowed for two deferred prosecutions, but did not limit it to once every 10 years.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) This bill is a product of the Impaired Driving Work Group that brought all stakeholders together. Ignition interlock devices makes the car hold the driver accountable. Three out of four people who get their licenses suspended, end up driving anyway. Ignition interlock devices are a good deterrent and there needs to be more people using them. This bill addresses the problem of offenders pleading down to lesser offenses. Of the 40,000 arrests for DUI per year, about 8,000 result in convictions for lesser offenses such as reckless driving or negligent driving in the first degree. There is not as much accountability for those lesser offenses. This bill requires offenders for those cases to install IIDs. Deferred prosecution should be available at least one more time if there is intensive treatment involved. Treatment works, but sometimes relapsing is a part of alcoholism. The bill allows people who successfully go through a treatment program to get back into treatment if necessary. This bill strikes a balance between holding offenders accountable and not clogging the system. It is important to give offenders day-for-day credit for voluntary installations of IIDs. That encourages people to install the devices on their cars right after the arrest. Drugged driving is more difficult to prosecute and often more complicated. There should be a requirement for a drug test when there has been a significant accident.

(With concerns) The deferred prosecution limit of once per lifetime was enacted in 2004 and increasing that option to twice is a step backward. The option should be limited to once every 10 years. People should not be able to manipulate the system. Violence is inherent in every drunk driving incident. The focus should be on protecting the public, not treating the offender. Requiring IIDs for negligent driving and recklessness is not appropriate because not all of those are related to impaired driving. Current law already allows the prosecutor to ask for the installation and allows courts to require it in those cases. Indigent defendants cannot afford to get these devices. Adding an IID requirement to those convictions will increase the number of cases that end up going to trial.

(Opposed) None.

Persons Testifying: (In support) Representative Goodman, prime sponsor; Steve Lindemann; Allyn Lindemann; James Evens, Gordon Thomas Honeywell; Moses Garcia, Steve Luce, and Rob Riechert, Washington State Patrol; and Steve Lind, Washington Traffic Safety Commission.

(With concerns) Patricia Fulton, Washington Association of Criminal Defense Lawyers and Washington Defenders Association; and Russ Hauge, Kitsap County Prosecuting Attorneys and Washington Association of Prosecuting Attorneys.

Persons Signed In To Testify But Not Testifying: None.