

HOUSE BILL REPORT

HB 2443

As Reported by House Committee On:

Judiciary
Transportation

Title: An act relating to increasing accountability of persons who drive impaired.

Brief Description: Increasing accountability of persons who drive impaired.

Sponsors: Representatives Goodman, Pedersen, Hurst, Kelley, Blake, Fitzgibbon, Ormsby, Hasegawa and Miloscia.

Brief History:

Committee Activity:

Judiciary: 1/18/12, 1/19/12 [DPS];

Transportation: 2/1/12, 2/6/12 [DP2S(w/o sub JUDI)].

Brief Summary of Second Substitute Bill

- Makes numerous changes regarding alcohol and drug-related driving statutes, including: the definition of "drugs;" ignition interlock licenses; vacating records of convictions; superior court jurisdiction over offenders; fees related to ignition interlock devices; and other changes.

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; Eddy, Hansen, Kirby, Klippert, Nealey, Orwall, Rivers and Roberts.

Staff: Trudes Tango (786-7384).

Background:

Driving Under the Influence.

A person can commit driving or being in physical control of a motor vehicle under the influence of intoxicating liquor or any drug (DUI) if the person drives with a blood or breath

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alcohol concentration (BAC) of .08 or higher or is under the influence of or affected by liquor or any drug.

The mandatory minimum penalties for DUI vary depending on the person's BAC and whether the person has "prior offenses." The term "prior offense" is defined and generally includes convictions for alcohol and drug-related driving offenses, such as negligent driving in the first degree, reckless driving if the original charge was DUI, and any deferred prosecution for similar alcohol-related driving offenses.

The mandatory minimum penalties include electronic home monitoring (EHM). The court may waive EHM under certain circumstances, but must impose an alternative sentence that can include jail time. The statute does not specify how much jail time the court should impose in lieu of EHM.

Penalties also include suspension of the person's driver's license by the Department of Licensing (DOL). A person's license may be suspended based on the criminal conviction or an administrative suspension based on the person's refusal to submit to a breath test.

Superior Court Jurisdiction.

The superior court may suspend a defendant's sentence and impose conditions of probation for up to the maximum term of the sentence or two years, whichever is longer. In district court, a DUI defendant in a deferred prosecution is under the district court's jurisdiction for five years.

Ignition Interlock License.

An ignition interlock license (IIL) authorizes a person to drive a noncommercial vehicle with an ignition interlock device (IID) while his or her regular driver's license is suspended. When a person is convicted of DUI, the court must order the person to apply for an IIL. The court must also order the person to submit to alcohol monitoring if the court orders the person to refrain from using alcohol.

Ignition Interlock Device Requirements.

After a person's regular license is reinstated, the person must drive with an IID for one year, five years, or 10 years, depending on whether the person was previously restricted. This requirement is not related to the IIL.

An IID is not required on cars owned by the person's employer and driven as a requirement of employment during working hours.

Vacating Records of Convictions.

Records of certain misdemeanor, gross misdemeanor, and felony convictions may be vacated if the person has completed all the terms of the sentence and meet the statutory criteria. Records of conviction for gross misdemeanor DUI may not be vacated. Felony DUI convictions may be vacated if at least 10 years have passed since the applicant completed all the terms of the sentence.

Implied Consent.

Under the implied consent laws, a driver is presumed to have given consent to a BAC test if the driver is arrested for DUI. If the driver refuses the test, the person's driver's license will be suspended regardless of whether there is a criminal conviction. A BAC test may be administered without the driver's consent under certain circumstances, such as if the person is arrested for vehicular homicide or vehicular assault.

Emergency Response Costs.

A person convicted of DUI and other alcohol-related offenses whose intoxication caused an incident resulting in an emergency response by a public agency is liable for the costs of the emergency response, up to \$1,000. The superior court may, as a condition of a suspended sentence, order the defendant to pay restitution to the public agency for its emergency response costs.

Summary of Substitute Bill:

Definition of Drug for Driving Related Offenses.

The term "drug" is amended to include any chemical inhaled or ingested for its intoxicating or hallucinatory effects. Thus, a person may commit DUI or negligent driving in the first degree if the person is under the influence of a chemical inhaled or ingested for its intoxicating or hallucinatory effects.

Superior Court Jurisdiction.

Superior courts have jurisdiction for up to five years over a defendant convicted of DUI whose sentence has been suspended. A defendant who has a suspended sentence and who fails to appear for any hearing to address the defendant's compliance with the terms of probation will have the term of probation tolled until the defendant makes his or her presence known to the court.

Ignition Interlock Licenses and Requirements.

Courts must require a DUI defendant to comply with the rules and requirements of the DOL regarding the installation of an IID, rather than requiring the defendant to apply for an IIL. Courts are given discretion to order the defendant to submit to alcohol monitoring.

A person convicted of reckless driving, when the original charge was DUI, may apply for an IIL. The DOL must grant the person credit on a day-for-day basis for any portion of a suspension already served under an administrative action arising out of the same incident.

A person who has never been licensed by the DOL, but who would otherwise be eligible to apply for an IIL, may apply for an IIL. The DOL may require the person to take any driver's license exam and may also require the person to apply for a temporary restricted license.

A person required to have an IID installed after reinstatement of his or her driver's license must pay an additional fee of \$20 per month to be deposited into the Ignition Interlock Device Revolving Account. The Washington State Patrol (WSP) must create a fee schedule by rule and collect fees from IID manufacturers, technicians, providers, and users. Fees are

to be deposited into the Highway Safety Account to fund the WSP impaired driving section programs.

When reasonably available in the area, IIDs must include technology capable of taking a photo identification of the person giving the breath sample.

Vacating Records of Convictions.

A record of conviction for felony DUI may not be vacated. A record of conviction for a gross misdemeanor that is a "prior offense" may not be vacated if the person has had a subsequent alcohol or drug violation within 10 years of the date of conviction of the prior offense.

Consent for Breath or Blood Test.

When a person is arrested for felony DUI, a breath or blood test may be administered without the person's consent.

Emergency Response Costs.

The limit on a defendant's liability for the cost of an agency's emergency response is increased from \$1,000 to \$5,000. Prior to sentencing, the prosecutor may present the court with information regarding the expenses incurred by the public agency. If the court finds the expenses reasonable, it must order the defendant to reimburse the agency and include the reimbursement in the sentencing order.

Miscellaneous.

Other changes are made, including:

- specifying that courts may impose jail time in lieu of mandatory EHM at a ratio of no less than one day in jail for 15 days of EHM;
- providing that plea agreements and sentences for felony DUI must be kept as public records;
- providing that a deferred prosecution for DUI granted in another state is a "prior offense" if the out-of-state deferred prosecution is equivalent to Washington's deferred prosecution;
- specifying that the employer exception does not apply if the employer's vehicle is used exclusively by the defendant solely for commuting to and from work or if the employer is an entity owned by the defendant or defendant's immediate family; and
- allowing municipalities, as well as counties, to establish DUI courts.

Substitute Bill Compared to Original Bill:

The substitute bill: (1) requires IIDs to be equipped with cameras, if reasonably available in the area as determined by the WSP; and (2) makes technical changes including correcting cross references and adding ignition interlock users to the list of persons subject to the WSP fee schedule.

Appropriation: None.

Fiscal Note: Not requested.

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 has been meeting for a few years. There are many technical and substantive changes. The bill focuses on the ignition interlock program, which has been successful in reducing deaths on the roads. Ignition interlocks put technology in the cars of known drunk drivers so the car holds the driver accountable. The bill expands and refines this very successful program. Tax payers do not pay for IIDs; the drunk driver pays. Interlocks cost about \$70 a month. The industry supports the WSP's ability to set fees to monitor compliance. Other states assess regulatory fees of technicians and providers and manufacturers. In the last three years, there have been an additional 15,000 interlock devices installed, but there is no good oversight of ignition interlocks. Grant money funded the WSP's interlock device compliance program and there is only one trooper in charge of all the regulatory oversight. The compliance program needs to be kept in place and the fee provision in the bill will help. It is important to regulate the industry and the WSP should be the one with the authority. The bill increases the indigent fund for ignition interlock users who cannot afford to pay for the devices. The bill also adds "huffing" as a crime, which means the law will cover people inhaling chemicals and driving. The current definition is very specific to drugs created for human consumption. But lately, chemical inhalants are used, which are not under the definition of drugs. If you purposefully use a chemical, such as glue or gasoline, in order to become impaired, you might be charged with reckless driving, but you could not currently be charged with a DUI. The bill's provision to include felony DUI in the implied consent statute is helpful. Felony DUI offenders already have four prior DUIs and they refuse any kind of breath test. This provision saves money because the officer does not have to get a warrant in order to get a blood draw, but would still have probable cause. The bill eliminates the ability of a defendant to vacate convictions of certain prior offenses that are amended from DUI. If records are vacated, it is difficult to determine if the person is committing a felony DUI. The bill allows a person who has never had a driver's license to apply for one.

(Opposed) None.

Persons Testifying: Representative Goodman, prime sponsor; Jason Berry, Washington State Patrol; Debra Coffey, Smart Start Incorporated; Amy Freedheim, King County Prosecutor's Office; and Rick Jensen, Muckleshoot Indian Tribe.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON TRANSPORTATION

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Judiciary. Signed by 20 members: Representatives Clibborn, Chair; Billig, Vice Chair; Liias, Vice Chair; Asay, Eddy, Finn, Fitzgibbon, Hansen, Jenkins, Ladenburg, McCune, Moeller, Morris, Moscoso, Reykdal, Rivers, Ryu, Takko, Upthegrove and Zeiger.

Minority Report: Do not pass. Signed by 9 members: Representatives Armstrong, Ranking Minority Member; Hargrove, Assistant Ranking Minority Member; Angel, Johnson, Klippert, Kristiansen, Overstreet, Rodne and Shea.

Staff: Jerry Long (786-7306).

Summary of Recommendation of Committee On Transportation Compared to Recommendation of Committee On Judiciary:

The second substitute bill clarifies that the superior court may revoke a defendant's suspended sentence if the defendant violates or fails to carry out the conditions of the suspended sentence. It uses the date of arrest for the offense, rather than the date of conviction, as the triggering date when calculating the time period that must pass before a person may vacate a conviction for a "prior offense." The second substitute bill removes language providing that the exemption from the ignition interlock device requirement for employer-owned and employer-controlled vehicles does not apply when the employer is an entity owned or controlled by the driver required to have an ignition interlock device.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Second 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 has been well worked with all of the stakeholders. One of the enhancements is having the ignition interlock with a camera to identify the person using the device. The work that has been accomplished in the past on the driving under the influence of intoxicating liquor or any drug (DUI) legislation has reduced the death rates related to DUI by 20 percent. The Washington State Patrol (WSP) only has one person certifying installer companies providing the ignition interlock devices, so the bill authorizes the WSP to charge a fee that will enable the agency to hire additional certifiers to make sure that the ignition interlock program is working as planned.

The state needs to charge the folks that get their driver's license reinstated for the ignition interlock device. New York has a law where the state has classified a person under the influence driving the wrong way on a roadway as a felony. This program works where persons that pay the \$20 monthly fee actually are paying for indigents that cannot afford to pay, so the whole program pays for itself.

Once a person is convicted of a DUI, the ignition interlock device is required and, in most cases, even after the person receives their regular driver's license back. There are 2.5 million to 3 million drunk drivers per year on the roadway.

Adding in drugs is really important since a person can be under the influence using alcohol or drugs. Felony DUI is the most dangerous and a person convicted under a felony DUI should not be able to apply to have the DUI removed from their driving record.

It is important that the interlock program is staffed with the appropriate number of persons to work in the program. There are more than 25,000 ignition interlock devices, 130 companies installing the devices, and 400 technicians working for those companies. There is a strong need to certify and regulate the industry. Normally you would have one sergeant overseeing six troopers. In this case, the sergeant would be a working trooper along with the other three troopers and one support staff.

It is recommended that there be an amendment to not require a self-employed person to install a device on every motor vehicle in their company.

(Opposed) None.

Persons Testifying: Representative Goodman, prime sponsor; Amy Freedliem, King County Prosecutor's Office; Jason Berry, Washington State Patrol; Patricia Fulton, Washington Association of Criminal Defense Lawyers and Washington Defender Association; and Steve Lind, Washington Traffic Safety Commission.

Persons Signed In To Testify But Not Testifying: None.