

SENATE BILL REPORT

SHB 1167

As Reported by Senate Committee On:
Judiciary, March 24, 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: Passed House: 3/05/11, 98-0.

Committee Activity: Judiciary: 3/23/11, 3/24/11 [DPA].

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended.

Signed by Senators Kline, Chair; Harper, Vice Chair; Pflug, Ranking Minority Member; Baxter, Carrell, Hargrove, Kohl-Welles, Regala and Roach.

Staff: Lidia Mori (786-7755)

Background: A 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).

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.

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.

Persons convicted of DUI are often required to 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.

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: (1) 15 percent in the Death Investigations Account to fund the Washington State Toxicology Laboratory's blood alcohol concentration testing programs; and (2) 85 percent in the State Patrol Highway Account to fund activities to increase the conviction rate and decrease the incidences of DUI.

Summary of Bill (Recommended Amendments): 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 act 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 caused substantial or great bodily harm or death to another person.

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.

The \$125 fee imposed on offenders is increased to \$150. Of the total amount, \$125 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.

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

EFFECT OF CHANGES MADE BY JUDICIARY COMMITTEE (Recommended Amendments): The fee of \$200 is reduced to a fee of \$150. It 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. \$125 must be distributed in the same manner as is the current fee, and \$25 of the \$150 fee must be deposited into the Highway Safety Account to be used to fund WTSC grants to reduce statewide collisions caused by DUI.

An offense that is dismissed upon successful completion of the requirements of a DUI court must be considered a prior offense for purposes of sentencing on a subsequent felony DUI offense. The person must have made an admission of guilt to the DUI.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony on Substitute House Bill: PRO: Statistics show the recidivism rates for those people who participate in therapeutic DUI courts are about 50 percent lower than those who go through the traditional court processes. This bill will encourage jurisdictions to create these therapeutic courts. Another thing that has been beneficial are victim impact panels where offenders actually hear from people who have been affected by people who have driven while intoxicated. Twenty-five dollars of the increased fee will go to the Traffic Safety Commission and \$50 will be divided as in current law. The Washington State Patrol has some innovative plans for the money that would go to the State

Patrol, things like buying new equipment and improving the quality of our work on DUIs. The fee that's increased in the bill was imposed in 1993 and has not been adjusted since then.

Persons Testifying: PRO: Representative Liias, prime sponsor; Steve Lind, WA Traffic Safety Commission.