

SENATE BILL REPORT

E2SHB 1789

As of March 23, 2011

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: House Committee on Transportation (originally sponsored by Representatives Goodman, Pedersen, Roberts and Miloscia).

Brief History: Passed House: 3/07/11, 96-0.

Committee Activity: Judiciary: 3/22/11.

SENATE COMMITTEE ON JUDICIARY

Staff: Lidia Mori (786-7755)

Background: There are two ways by which a person can commit the offense of driving under the influence of intoxicating liquor or any drug (DUI). A person commits DUI 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 a person drives and is under the influence of or affected by intoxicating liquor or any drug. 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. For an offender who has no prior offenses and whose BAC is less than 0.15 or there is no BAC for reasons other than refusal, the minimum time in jail is one day or 15 days of electronic monitoring. If the offender's BAC is 0.15 or higher or the offender refused the BAC test, the mandatory minimum penalty is two days in jail or 30 days of electronic monitoring. DUI statutes require the offender to pay the costs of electronic home monitoring. The court may impose costs on a convicted defendant. Costs may include the cost of incarceration, capped at \$100 per day. The statute provides that other court-ordered legal financial obligations take precedence over the payment of costs of incarceration.

Prior offenses include convictions for (1) DUI; (2) vehicular homicide and vehicular assault if either was committed while under the influence of alcohol or drugs; (3) negligent driving in the first degree, reckless driving and reckless endangerment, if the original charge was DUI, vehicular homicide, or vehicular assault; and (4) an equivalent out-of-state offense. In

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addition, a deferred prosecution for DUI or negligent driving in the first degree counts as a prior offense.

A conviction for DUI is a class C felony if the driver has (1) four or more DUI-related prior offenses within 10 years; or (2) any prior conviction of a DUI-related vehicular homicide or vehicular assault, or a comparable out-of-state conviction.

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.

Summary of Bill: The mandatory minimum jail sentence for a first-time DUI offender is increased. For an offender with a BAC of less than 0.15 (or if there was no BAC for reasons other than refusal), the mandatory minimum jail term is three days, rather than one day. For an offender with a BAC of 0.15 or higher (or if the offender refused to take the BAC test), the mandatory minimum jail term is one week, rather than two days. The offender must pay the cost of incarceration.

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 DUI.

The offense of DUI becomes a felony DUI if the person has ever previously been convicted of felony DUI in Washington.

When calculating the time a person is required to have an IID installed, 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. A person convicted of negligent driving in the first degree must install an IID for six months on all vehicles operated by the person if the person has any prior offense, as defined in DUI statutes. A person convicted of reckless driving who has a prior offense must install an IID for six months if the original charge was filed as a DUI. A person convicted of reckless driving, whether or not the person has any prior offenses, must install an IID for six months if the original charge was filed as vehicular assault based on DUI or vehicular homicide based on DUI. 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.

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: PRO: The Washington Traffic Safety Commission is in support of the portion of the bill dealing with increasing the use of IID. It is not uncommon for a person to be convicted of DUI without the existence of a BAC. The number one killer on the roads is impaired drivers. Recidivism is much lower with drivers that have IID. Sixteen to 20,000 IID have been installed now in Washington. The good news about impaired driving is that there were 263 fatalities in 2009 and in 2010, there's been a 20 percent drop. This is significant. We have two studies going on that the Legislature requested; results will be in a couple years. The effect of IID is limited to when it is installed; when it comes off, the recidivism goes back up. In this bill, we're going after the pleading down problem by requiring more people who are charged with alcohol related offense to use an IID. Use of deferred prosecution in DUI cases has gone down a lot, and it's believed that the defense bar is putting it on hold since only one deferred prosecution for DUI is allowed in a person's lifetime. A jail cell is 100 percent effective in keeping a person from drinking and driving. Education and enforcement awareness seems to have gone about as far as they can; more jail time will influence the population that drinks and drives. This is a good first step. As parents and family of people who have been murdered by drunk drivers, we can't help it if a county can't collect from someone sentenced to jail who is required to pay for it. What this bill costs isn't even enough to pay for one of the surgeries that has been required for one of the two people injured in the car that our daughter was in when she was killed by a drunk driver. Our goal is to discourage people from driving drunk in the first place.

OTHER: The association of cities is concerned about the extended jail time in the bill and the requirement that the offender pay the cost. Only about 30 percent of offenders are shown to pay for costs, so this doesn't address the fiscal impact of this provision. Additional jail time isn't productive. We support an amendment to remove the increased jail time. Counties only collect about 30 percent from offenders who are ordered to pay for their jail time or electronic monitoring. 40,000 DUI arrests per year and two-thirds are first time offenders. It costs about \$76 per day for jail.

Persons Testifying: PRO: Representative Goodman, prime sponsor; Steve Lind, WA Traffic Safety Commission; Frank S. Blair, parent of DUI victim.

OTHER: Brian Enslow, WA State Assn. of Counties; Candace Bock, Assn. of WA Cities.