

# SENATE BILL REPORT

## E2SHB 1789

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As Reported by Senate Committee On:  
Judiciary, March 23, 2011  
Transportation, March 31, 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, 3/23/11 [DPA].

Transportation: 3/29/11, 3/31/11 [DPA].

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### 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)

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### SENATE COMMITTEE ON TRANSPORTATION

**Majority Report:** Do pass as amended.

Signed by Senators Haugen, Chair; White, Vice Chair; King, Ranking Minority Member; Fain, Assistant Ranking Minority Member; Delvin, Eide, Ericksen, Hill, Hobbs, Litzow, Nelson, Prentice, Ranker, Sheldon, Shin and Swecker.

**Staff:** Amanda Cecil (786-7429)

**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

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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.*

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 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.

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.

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):** 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.

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 \$200. Of the total amount, \$175 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 TRANSPORTATION COMMITTEE (Recommended Amendments):** The mandatory minimum jail sentences for first-time DUI offenders remain as in current law.

The following provisions, originally included in SHB 1167 are included:

- Counties may establish and operate DUI courts for nonviolent offenders, and restrictions are placed on how state funds are used.
- Minimum requirements are established for participation of offenders.
- The Washington Traffic Safety Commission (WTSC) may develop and maintain a registry of qualified victim impact panels (VIP).
- When a court requires an offender to attend a VIP, the court may refer the offender to a VIP listed on the registry.
- The \$125 fee imposed on offenders is increased to \$200. Of the total amount, \$175 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.
- 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 mandatory minimum jail sentences for first-time DUI offenders remain as in current law.

**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 Engrossed Second Substitute House Bill (Judiciary):** 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 (Judiciary):** 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.

**Staff Summary of Public Testimony on Recommended Amendments as Passed JUD (Transportation):** PRO: The number one killer on the roads is impaired drivers. Recidivism is much lower with drivers that have IID. The good news about impaired driving is that there were 263 fatalities in 2009 and in 2010, there's been a 20 percent drop. 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.

**Persons Testifying (Transportation):** PRO: Representative Goodman, prime sponsor; Steve Lind, WA Traffic Safety Commission; Jason Berry, WA State Patrol.