

SENATE BILL REPORT

2SHB 2443

As Reported by Senate Committee On:
Judiciary, February 23, 2012
Transportation, February 27, 2012

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

Brief Description: Increasing accountability of persons who drive impaired.

Sponsors: House Committee on Transportation (originally sponsored by Representatives Goodman, Pedersen, Hurst, Kelley, Blake, Fitzgibbon, Ormsby, Hasegawa and Miloscia).

Brief History: Passed House: 2/13/12, 98-0.

Committee Activity: Judiciary: 2/21/12, 2/23/12 [DPA].
Transportation: 2/27/12 [DPA].

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended.

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

Staff: Aldo Melchiori (786-7439)

SENATE COMMITTEE ON TRANSPORTATION

Majority Report: Do pass as amended.

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

Staff: Kim Johnson (786-7472)

Background: A person commits 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 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

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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 for a DUI conviction 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 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. 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 license is 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.

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 defendant in a deferred prosecution for DUI remains under the district court's jurisdiction for five years.

An ignition interlock license (IIL) authorizes a person to drive a noncommercial vehicle with an ignition interlock device (IID) while the person's regular driver 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.

After a person's regular license is reinstated, the person must drive with an IID for one year, five years, or ten 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.

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

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 Bill (Recommended Amendments): 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. 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 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. 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 DOL, but who would otherwise be eligible to apply for an IIL, may apply for an IIL. 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 ten years of the date of arrest for 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 \$2,500. 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.

Other Changes. 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; and
- allowing municipalities to enter into cooperative agreements with counties for DUI courts.

EFFECT OF CHANGES MADE BY TRANSPORTATION COMMITTEE (Recommended Amendments): The limit on a defendant's liability for the cost of an agency's emergency response is increased from \$1,000 to \$2,500 instead of \$5,000. Municipalities may enter into cooperative agreements for DUI courts.

WSP is required to set the fees at a level necessary to support effective operation of the oversight program and report back the the Transportation Committees and OFM on the level of the fees adopted and whether those fees are sufficient to cover the cost of operating the oversight program.

An effective date of August 1, 2012 is provided.

EFFECT OF CHANGES MADE BY JUDICIARY COMMITTEE (Recommended Amendments): The limit on a defendant's liability for the cost of an agency's emergency response is increased from \$1,000 to \$2,500 instead of \$5,000. Municipalities may enter into cooperative agreements for DUI courts.

Appropriation: None.

Fiscal Note: Available.

[OFM requested ten-year cost projection pursuant to I-960.]

Committee/Commission/Task Force Created: No.

Effective Date: The bill takes effect on August 1, 2012.

Staff Summary of Public Testimony as Heard in Committee (Judiciary): PRO: This comprehensive bill is the result of a workgroup that had broad representation. We need to focus on the effect of the chemicals being ingested, not on the specific identity of the chemicals. People use a variety of chemicals to get high, so we need a broadly worded statute to encompass their behavior. Deaths and injuries on our highways have been reduced by the use of ignition interlock devices. Savvy offenders refuse breath tests and have nothing to lose because their licenses have already been suspended. Statistically, impaired drivers endanger hundreds of people.

Persons Testifying (Judiciary): PRO: Representative Goodman, prime sponsor; Jason Berry, WA State Patrol; Amy Freedheim, King County Prosecutor's Office; Steve Lind, WA Traffic Safety Commission.

Staff Summary of Public Testimony as Amended by Judiciary (Transportation): PRO: We are very supportive of this bill in its entirety. The fiscal impact to the WSP is focused on the oversight of the pilot program. There is a demonstrated need in this state to oversee the ignition interlock industry. One trooper is not enough to adequately cover the whole state. The industry as a whole understands the key role that they play in helping to prevent impaired drivers from operating a motor vehicle, there are just a few bad actors out there that we need to be able to catch and remove. Funding from the Washington Traffic Safety Commission for the pilot is about to run out and we needed to identify new state funding. There are many other states that do fee based compliance funding and the fees that the WSP proposes to adopt are based on what other states are charging for the same work.

We've been very supportive of the provisions of this bill and thank the prime sponsor for his work. In particular the cities support section 6 which will help to streamline our collection of emergency cost reimbursement. We do have a concern with the language that the Judiciary Committee adopted regarding the authority for a municipal entity to create and operate its own DUI court. We preferred the language in the bill as it came over from the House.

Persons Testifying (Transportation): PRO: Jason Berry, WSP; Steve Lind, WA Traffic Safety Commission; Candice Bock, Assn. of WA Cities.