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## Public Safety Committee

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### HB 1482

**Brief Description:** Modifying provisions that address impaired driving.

**Sponsors:** Representatives Goodman, Habib, Kirby, Orwall, Hurst, Moscoso, Takko, Seaquist, Bergquist, Ryu, Fey, Appleton, McCoy, Green, Lytton, Pollet, Liias and Stonier.

#### Brief Summary of Bill

- Prohibits the "wash out" of previous felony driving and a physical control of a vehicle while under the influence of intoxicating liquor or drugs (DUI/PC) offenses if a person's present conviction is for a new felony DUI/PC offense.
- Amends the definition of "prior offense" in the impaired driving statutes to include cases where a deferred sentence was imposed as a result of the original charge being pled down.
- Authorizes courts, if alcohol monitoring devices utilizing wireless reporting technology becomes available, to require offenders to obtain such a device.
- Clarifies the statutory sentence enhancements for individuals convicted of an impaired driving offense when a minor passenger was in the vehicle at the time of the offense.
- Clarifies that as a condition of probation that an offender cannot drive: (1) without having both a valid license and liability insurance or (2) with any drug concentration in his or her system.
- Clarifies the statutory provisions authorizing law enforcement to arrest a person when the officer has probable cause to believe that the offense committed or being committed involves certain impaired driving violations.
- Authorizes municipalities to directly establish and operate DUI courts.
- Clarifies that deferred sentencing is not available for DUI/PC offenses.
- Creates a sentence enhancement for offenders convicted of DUI and found to be driving in the opposite direction of traffic on a multiple lane roadway.
- Authorizes the Washington State Patrol to create by rule the statement for certifying ignition interlock devices.

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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.*

- Requires ignition interlock restrictions to remain in effect in certain situations unless a re-test was performed within 10 minutes registering a lower breath alcohol concentration level and a digital image confirms the same person provided both samples.
- Removes provisions that require the marking of a person's driver's license upon arrest or conviction for an impaired driving offense.
- Disqualifies a person from driving a commercial motor vehicle if the person has been convicted of driving while having an illegal chemical tetrahydrocannabinol (THC) concentration level in his or her system.

**Hearing Date:** 2/7/13

**Staff:** Yvonne Walker (786-7841).

**Background:**

A person can commit driving under the influence (DUI) or being in physical control of a motor vehicle under the influence (PC) of intoxicating liquor or any drug 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. A DUI/PC offense is punishable as a gross misdemeanor offense. It becomes a class C felony offense if a person has four or more prior offenses within 10 years.

Sentencing Reform Act Scoring. Under the Sentencing Reform Act (SRA), an offender convicted of a felony receives a standard sentence range that is based on the seriousness of the offense and the offender's prior felony convictions. The number of points an offender receives for current and prior offenses varies according to certain rules.

Serious traffic convictions are generally not included in a person's score if, since the last date of release from confinement pursuant to a felony conviction, the offender has spent five years in the community without committing a new crime. Serious traffic offenses include the following non-felony offenses: DUI/PC, Reckless Driving, or Hit-and-Run attended vehicle.

If a person's current conviction is a felony DUI/PC offense, then all prior felony DUI/PC, and serious traffic offenses are included in the person's score if: (1) the prior convictions were committed within five years since the last date of release from confinement; or (2) the prior convictions are considered "prior offenses within 10 years." A prior offense is "within 10 years" if the arrest for a prior offense occurred within 10 years of the arrest for the current offense. By contrast, under felony sentencing laws, the corresponding time period is generally from the end of the person's confinement for a prior crime to the commission of the new crime.

"Prior offenses" include convictions for: (1) DUI/PC; (2) vehicular homicide and vehicular assault if either was committed while under the influence; (3) negligent driving after having consumed alcohol ("wet neg"), reckless driving, and reckless endangerment, if the original charge was DUI/PCI, vehicular homicide, or vehicular assault; and (4) an equivalent local DUI/PC ordinance or out-of-state DUI law. In addition, a deferred prosecution for DUI or "wet neg"

is a prior offense even if the charges are dropped after successful completion of the deferred prosecution program.

Electronic Home Monitoring. The mandatory minimum penalties for a DUI/PC offense vary depending on the person's BAC and whether the person has "prior offenses." The mandatory minimum penalties may include electronic home monitoring (EHM) to be paid for by the offender. The court may also require the offender's EHM device to include an alcohol detection breathalyzer and may restrict the amount of alcohol the offender may consume during the time he or she is on electronic monitoring. The court may waive EHM under certain circumstances, such as when the offender lacks a dwelling or telephone services. Whenever the mandatory minimum term of EHM is waived, the court must impose an alternative sentence that can include jail time, work crew, or work camp.

Penalty for Alcohol Concentration of Less than 0.15 (with no prior convictions in seven years). In an impaired driving case where a person has an alcohol concentration at least 0.15, the offense is punishable by imprisonment no less than two days, but no more than 364 days. Two consecutive days of the imprisonment may not be suspended or deferred unless the court finds that the imposition of the mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being.

Impaired Driving Offense With a Child in the Vehicle. The state's drunk driving laws have a number of penalty enhancements for individuals convicted of DUI/PC offenses. Two enhancements apply to individuals arrested and convicted of DUI/PC when there is a minor passenger in the vehicle.

First, the court must order the person to use an ignition interlock device on his or her vehicle for six months on top of the mandatory ignition interlock requirement already applicable for a DUI/PC conviction. Second, if an individual is convicted of a gross misdemeanor DUI/PC offense with a child under the age of 16 years in the vehicle, monetary penalties are assessed based on the individual's prior convictions as follows:

- no prior offenses – minimum of \$1,000 and maximum of \$5,000;
- one prior offense within seven years – minimum of \$2,000 and maximum of \$5,000; and
- two or three prior offenses with seven years – minimum of \$3,000 and maximum of \$10,000.

If an individual is convicted of a felony DUI/PC, Vehicular Assault DUI, or Vehicular Homicide DUI and had a child under the age of 16 years in the vehicle at the time of the offense, a 12-month sentence enhancement for each child in the vehicle is added to the individual's standard sentence.

The current statutory language is ambiguous as to whether these penalties and enhancements are in addition to or in lieu of the current penalties for DUI offenses.

Conditions of Probation. Whenever a court imposes up to 364 days in jail for a person convicted of an impaired driving offense, the court also has jurisdiction over the offender for up to five years in order to supervise probationary sentences. Courts must impose conditions of probation that include: (1) not driving without a valid license and proof of financial responsibility for the future; (2) not driving while having an alcohol concentration of .08 or more within two hours

after driving' and (3) not refusing to submit to a breath or blood test to determine alcohol concentration when a law enforcement officer believes the person was driving or was in physical control of a motor vehicle while under the influence of alcohol. A violation of probation can result in incarceration and suspension of a person's license, permit, or privilege to drive.

Arrest Without Warrant. A police officer having probable cause to believe that a person has committed or is committing a felony has the authority to arrest the person without a warrant. A police officer may also arrest a person without a warrant for committing a misdemeanor or gross misdemeanor offense but only when the offense is committed in the presence of the officer, except in certain enumerated situations.

Establishment of DUI Courts. Counties are authorized to establish and operate DUI courts for nonviolent offenders. Municipalities must enter into cooperative agreements with counties that have DUI courts to provide DUI court services. Any jurisdiction that establishes a DUI court must establish minimum requirements for the participation of offenders in the DUI court. 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 or convicted of certain enumerated offenses, or an offense during which the defendant used a firearm, or an offense during which the defendant caused substantial or great bodily harm or death to another person.

Deferred Sentences. A "deferred sentence" means a sentence that will not be carried out if the defendant meets certain requirements, such as complying with the conditions of probation. A defendant who has a deferred 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. The deferral of a sentence may also be revoked if the defendant violates or fails to carry out any of the conditions of the deferral and as a result the original sentence previously suspended or unexecuted may be imposed. Generally, deferred sentences are not available for misdemeanor DUI/PC offenses.

Sentencing Enhancements. Under the SRA, the court must impose imprisonment in addition to the standard sentencing range if specific conditions for sentencing enhancements are met. Sentencing enhancements may apply in such situations as when the offender: (1) was armed with a firearm or deadly weapon while committing certain felonies; (2) committed certain felonies while incarcerated; (3) committed certain drug offenses; (4) committed vehicular homicide while under the influence of alcohol or drugs; (5) committed a felony crime that was committed with sexual motivation; or (6) attempted to elude a police vehicle while endangering one or more persons. The U.S. Supreme Court, in *Blakely v. Washington*, ruled that any factor that increases a defendant's sentence above the standard range, other than the fact of a prior conviction, must be proven to a jury beyond a reasonable doubt. To do otherwise would violate the defendant's right to a jury trial under the Sixth Amendment.

*Attempting to Elude a Police Vehicle:* In a case where a special allegation has been made, if a court makes a finding of fact, or in a jury trial if the jury finds a special verdict, that: (1) an offender committed the crime of Attempting to Elude a Pursuing Police Vehicle, and (2) the underlying offense involved the endangerment of one or more persons (other than the defendant

or pursuing law enforcement officer), then the court must impose a sentence enhancement of 12 months and one day of imprisonment.

Ignition Interlock Device. *Ignition Interlock Certification Form:* The Washington State Patrol (WSP), by rule, provides standards for the certification, installation, repair, and removal of ignition interlock devices. Under the WSP rules, the ignition interlock device must meet certain specifications. For example, the device must meet or exceed minimum test standards of the model specifications for ignition interlock devices published under federal law. Only a notarized statement from a laboratory that is certified by the International Organization of Standardization is capable of performing the tests specified will be accepted as proof of meeting or exceeding the standards. The notarized statement for certifying ignition interlock devices referencing the ignition interlock standards that must be met under the Federal Register is specified and referenced in the WSP's statute.

*Ignition Interlock Test:* When a person has his or her regular driver's license reinstated and an ignition interlock device is required to be installed, that device must remain on the vehicle until the Department of Licensing (DOL) receives a declaration from the person's ignition interlock vendor certifying that there have been no "incidents" in the four consecutive months prior to the date the requirement expires. An "incident" is: (1) an attempt to start the vehicle with a BAC of .04 or higher; (2) failure to take or pass any required re-test; or (3) failure of the person to appear at the vendor when required.

Driver's License. *Marking of Drivers' Licenses:* If, after arrest for an impaired driving offense, a person is found to have an alcohol or drug concentration above the statutory legal limits, the DOL must notify the person in writing of its intent to suspend, revoke, or deny the person's license or privilege to drive and the DOL or the arresting law enforcement officer must mark the person's driver's license. In addition, the court must also mark a person's driver's license when a person is convicted of an offense for which mandatory withholding of the driving privilege is required.

*Commercial Driver License:* A person can be disqualified from driving a commercial motor vehicle for a period of not less than one year if the DOL receives a report that the person has been convicted of a first violation of DUI, driving a commercial motor vehicle while the alcohol concentration in the person's system is .04 or more, leaving the scene of an accident, using a motor vehicle in the commission of a felony, refusing to submit to a test to determine the person's alcohol or drug concentration, driving a commercial motor vehicle with a revoked, suspended, or canceled driver's license, or causing a fatality through the negligent operation of a commercial motor vehicle, including but limited to the crimes of Vehicular Homicide and Negligent Homicide.

The statute does not address the grounds for disqualification from driving a commercial vehicle when a person is found with a chemical tetrahydrocannabinol (THC) concentration in his or her system. "THC" is a chemical found in marijuana.

### **Summary of Bill:**

Numerous clarifications are made to the impaired driving statutes, sentencing enhancements are established, and statutory provisions are amended relating to ignition interlock devices, EHM devices, driver license requirements, and scoring provisions under the SRA.

Sentencing Reform Act Scoring. The scoring provisions under the SRA are clarified to provide that if a defendant's present conviction is for a felony DUI/PC offense, then each prior felony DUI/PC conviction, serious traffic offense conviction, and prior convictions considered a "prior offense within 10 years," must be included in the offender score. In addition, if a defendant's present conviction is for a felony DUI/PC offense then prior felony DUI/PC offenses can never "wash out" and must always be included in the offender's score.

The definition of a "prior offense" in the impaired driving statute is expanded to include deferred sentences in cases where a deferred sentence was imposed in a prosecution for a Negligent Driving in the first degree offense, a Reckless Driving offense, or a Reckless Endangerment offense, when the original charge (which was pled down to a lesser charge) was filed as a DUI/PC offense or an equivalent ordinance, or a Vehicular Homicide, or Vehicular Assault offense.

Electronic Home Monitoring. In cases where a court requires an offender to use an EHM device, the court may also require the device to include another type of separate alcohol monitoring device (instead of an alcohol detection breathalyzer). If a court determines that an alcohol monitoring device utilizing wireless reporting technology is reasonably available, the court may require the offender to obtain such a device during the period of his or her required EHM.

In addition, whenever a mandatory minimum term of EHM is waived, the court shall impose an alternative sentence that may include, but is not limited to the use of an ignition interlock device.

Penalty for Alcohol Concentration of Less than 0.15 (with no prior convictions in seven years). The reference relating to the mandatory minimum imprisonment time period, for a person charged with an alcohol concentration of at least 0.15, is changed to 48 consecutive hours (instead of two consecutive days) in jail.

Impaired Driving Offense With a Child In the Vehicle. The statutory sentence enhancements for individuals convicted of an impaired driving offense when a minor passenger was in the vehicle are clarified by providing that the ignition interlock penalties and the fines are in addition to all other impaired driving penalties imposed by law.

Conditions of Probation. The conditions of probation that courts must impose for an impaired driving offense are clarified to state that an offender cannot drive: (1) without "both" a valid license and liability insurance; and (2) while having any measurable amount of drug concentration in his or her system.

Arrest Without Warrant. Statutory provisions are clarified and expanded to authorize law enforcement to arrest a person when the officer has probable cause to believe that the offense committed or being committed involves a person who is under the age of 21 years driving a motor vehicle after consuming alcohol or a person violating a traffic offense where he or she is driving, operating, or are in physical control of a commercial motor vehicle while having alcohol in his or her system.

Establishment of DUI Courts. Municipalities are authorized to independently establish and operate DUI courts or enter into cooperative agreements with counties that have DUI courts to provide DUI court services.

Deferred Sentences. Statutory provisions are amended to clarify that deferred sentences are not available for a misdemeanor DUI/PC offense and courts are specifically prohibited from granting a deferred sentence for any DUI/PC misdemeanor offense.

Sentencing Enhancement. *Attempting to Elude a Police Vehicle:* The sentencing enhancement for Attempting to Elude a Police Vehicle offense is clarified to be mandatory, to be served in total confinement, and it must run consecutively to other sentencing penalties.

*Driving on the Wrong Side of the Road:* A procedure is established for determining whether a DUI offense was committed while the offender was also driving the wrong way on a road and a new sentencing enhancement penalty is created for the conviction of such DUI offenses. In a criminal case where a special allegation has been made, if a court makes a finding of fact, or in a jury trial if the jury finds a special verdict, that: (1) the offender was convicted of DUI; and (2) the underlying DUI offense was committed while the offender was driving in the opposite direction of the normal flow of traffic on a multiple lane roadway with a posted speed limit of 45 miles per hour or more, than the court must impose a sentence enhancement. The sentence must include a sentence enhancement of 12 months of imprisonment that is added to the offender's presumptive sentence. The sentence enhancement is mandatory, must be served in total confinement, and must run consecutively to all other sentencing penalties.

Ignition Interlock Devices. *Ignition Interlock Certification Form:* The WSP is authorized to create by rule the statement for certifying ignition interlock devices instead of the form referencing the Federal Register being specifically listed in the WSP's statute.

*Ignition Interlock Re-test:* An ignition interlock restrictions imposed on a person must remain in effect until the DOL receives confirmation from the interlock device vendor stating that the offender has not tried to start the vehicle with an illegal BAC level unless a subsequent test was performed within 10 minutes which registers a lower BAC level and a digital image confirms the same person provided both samples.

Driver's License. *Marking of Drivers' Licenses:* The statutory provisions that require the DOL, law enforcement, and the courts to mark the driver's license of a person arrested, charged, or convicted of an impaired driving offense is removed.

*Commercial Driver License:* A person is disqualified from driving a commercial motor vehicle for a minimum of one year if a report is received by the DOL that he or she has been convicted of driving a motor vehicle with THC in the person's system.

Other Amendments. Subtitles and other technical corrections are made to the DUI and PC statutes relating alcohol and drug violators.

**Appropriation:** None.

**Fiscal Note:** Preliminary fiscal note available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.