

HOUSE BILL REPORT

HB 1482

As Reported by House Committee On:
Public Safety

Title: An act relating to impaired driving.

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 History:

Committee Activity:

Public Safety: 2/7/13, 2/14/13 [DPS].

Brief Summary of Substitute Bill

- Clarifies the scoring provisions under the Sentencing Reform Act (SRA) for defendants convicted of felony driving and physical control of a vehicle while under the influence of intoxicating liquor or drugs (DUI/PC) offenses.
- Amends the definition of "prior offense" in the impaired driving statutes to include offenses 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.
- Amends the penalty provisions relating to when a person is convicted of an impaired driving offense when a minor passenger was in the vehicle at the time of the offense.
- Amends the statutory provisions that require a court to impose conditions of probation to include prohibiting the offender from: (1) driving without having both a valid license and liability insurance; and (2) driving or being in physical control of a vehicle while having an illegal alcohol or drug concentration in his or her system.
- Authorizes 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.

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.

- Clarifies that deferred sentencing is not available for DUI/PC offenses.
- Expands the illustrative list of aggravating factors that a court may consider when imposing an exceptional sentence to include cases where an offender was driving in the opposite direction of traffic on a multiple lane roadway with a posted speed limit of 45 miles per hour or greater.
- Authorizes the Washington State Patrol to create by rule the statement for certifying ignition interlock devices.
- Requires ignition interlock restrictions to remain in effect in certain situations unless a re-test was performed within 10 minutes of registering a lower breath alcohol concentration level and a digital image confirms the same person provided both samples.
- Removes provisions that required the courts, law enforcement, and the Department of Licensing to mark a person's driver's license upon arrest or conviction for an impaired driving offense.
- Disqualifies a person from driving a commercial motor vehicle for a specified amount of time if the person has been convicted of driving while having an illegal chemical tetrahydrocannabinol concentration level in his or her system.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Goodman, Chair; Roberts, Vice Chair; Klippert, Ranking Minority Member; Hayes, Assistant Ranking Minority Member; Appleton, Holy, Hope, Moscoso, Pettigrew, Ross and Takko.

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 0.08 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 nonfelony 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 at Least 0.15 (With No Prior DUI/PC Convictions in Seven Years). In an impaired driving case where a person has an alcohol concentration of at least 0.15, the offense is punishable by imprisonment of 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.

In addition to the fines collected, the courts also impose and collect a public safety and education assessment (PSEA) equal to 70 percent of the fine.

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 0.08 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 gross 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 United States 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.

Aggravating Circumstances. Generally, the standard sentencing range is presumed to be appropriate for the typical felony case. However, the law provides that, in exceptional cases, a court has the discretion to depart from the standard range and may impose an exceptional sentence below the standard range (with a mitigating circumstance) or above the range (with an aggravating circumstance). The SRA provides an exclusive list of aggravating circumstances which the court may consider an aggravating circumstance or which a jury may consider in imposing an exceptional sentence above the standard range.

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 WSPs 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 0.04 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's 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 0.04 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 motor vehicle when a person is found with a chemical tetrahydrocannabinol (THC) concentration in his or her system. This "THC" is a chemical found in marijuana.

Summary of Substitute Bill:

Numerous clarifications are made to the impaired driving statutes including clarifying the SRA scoring provisions, adjusting statutorily imposed fines, expanding the list of aggravating circumstances, and amending statutory provisions relating to ignition interlock devices, the EHM devices, and commercial driver license restrictions.

Sentencing Reform Act Scoring. The scoring provisions under the SRA are clarified. If a defendant's present conviction is for a felony DUI/PC offense, then all predicate crimes for the offense must be included in the offender score. The score must also always include all prior convictions for felony DUI/PC convictions.

The definition of a "prior offense" in the impaired driving statute is expanded to include 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 EHM device to include another separate type of 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 at Least 0.15 (With No Prior DUI/PC 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. A person who is convicted of a DUI/PC offense when a minor was in the vehicle at time of the offense must use an ignition interlock device for six months and pay a \$500 fine. These penalties are in addition to any other mandatory penalties imposed by law. The \$500 fine is exempt from the PSEA that is imposed for other fines, forfeitures, and penalties.

Conditions of Probation. The conditions of probation that courts must impose for an impaired driving offense are clarified. In a case where an offender is on probation, the court must impose conditions of probation that prohibits an offender from: (1) driving without "both" a valid license and liability insurance; and (2) driving or being in physical control of a vehicle while having a THC concentration of 5.0 nanograms or higher concentration in his or her system within two hours of driving.

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 gross misdemeanor offense committed or is being committed involves: (1) a person, under the age of 21 years, who is driving a motor vehicle after consuming alcohol; or (2) a person driving, operating, or is 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 gross misdemeanor DUI/PC offense and courts are specifically prohibited from granting a deferred sentence for any DUI/PC gross 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.

Aggravating Circumstances. *Driving on the Wrong Side of the Road:* The list of aggravating circumstances is expanded. A court may consider as an aggravating circumstance that during the commission of the offense, the defendant was driving in the opposite direction of the normal flow of traffic on a multiple lane highway with a posted speed limit of 45 miles per hour or greater.

Ignition Interlock Devices. *Ignition Interlock Certification Form:* The WSP is authorized to create by rule the statement for certifying ignition interlock devices. As a result, the ignition interlock certification form referencing the federal register and the federal standards is removed from the WSP's statute.

Ignition Interlock Re-test: An ignition interlock restriction 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 in the four previous months 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 are eliminated.

Commercial Driver's 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 any measureable amount of THC in the person's system. Law enforcement must also issue an out-of-service order against a person who drives or is in physical control of a commercial vehicle while having THC in his or her system.

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

Substitute Bill Compared to Original Bill:

The substitute bill clarifies the scoring provisions in the SRA to provide that if a person is currently charged with a felony DUI offense then all predicate crimes for the DUI offense will be included in the offender score, and prior convictions for felony DUI or felony physical control must always be included in the offender score. All other convictions of the defendant are allowed to wash out as provided in current statute.

A statutory reference is corrected relating to 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 relating to THC (as well as alcohol) in the person's system.

The language relating to the sentence enhancements for individuals convicted of DUI when a minor passenger was in the vehicle at the time of the offense is changed to allow courts to order the use of an ignition interlock device and impose a \$500 fine instead. The fine is specifically exempted from the additional PSEA fee required under current law.

The 12-month sentence enhancement for offenders convicted of DUI and found to be driving in the opposite direction of traffic on a multilane roadway is eliminated and instead, courts are given the discretion in imposing an aggravating circumstance in such cases. The provision relating to probation is amended to authorize the courts to prohibit a DUI offender who is on probation from driving or being in physical control of a vehicle while having an illegal alcohol or THC concentration. A person can be disqualified from driving a commercial motor vehicle if the DOL receives a report that the person was driving a commercial motor vehicle with any measurable amount of THC concentration.

Other technical amendments are also made.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) This bill is the result of work accomplished by the Impaired Driving Work Group (Group). The bills that this Group has helped enact over the last couple of years have resulted in a 30 percent reduction of deaths and serious injuries on the state's roadways. Washington leads the nation in reducing deaths and serious injuries from impaired driving.

There are several provisions of this bill that are quite important. The DUI laws relating to a minor having consumed alcohol and commercial motor vehicle drivers, are not included in current statute that allows an officer to arrest that person, unless that offense is committed directly in the officer's presence. This bill fixes that provision and allows an officer to do an investigation, arrest the person, and hold that person accountable for a violation of that statute.

In regards to the certification for ignition interlocks, this bill is removing the certification language from the statute and places it in rule. This is a cleanup provision since the WSPs certification standards for ignition interlocks are based on federal standards. As a result, every time the federal standards change, the WSP will be able to more easily modify its rules.

In relation to the users of ignition interlocks, this bill protects those users from having to use an extension for their interlock requirement if they are found to have had a positive test result. There are instances where a user, through no fault of his or own, may register a positive alcohol reading on a test or show that they are not present for their randomly

required test. Now, because of digital technology, it can be confirmed if that person was actually present for the test and if they were not, then it would not be a violation.

In regards to commercial drivers, under the bill there is a zero tolerance for THC. This is the same standard and in line with the zero tolerance for alcohol which requires commercial drivers to have no alcohol in their system while they are driving a commercial vehicle. There are subsequent license penalties if a driver is found in violation.

Under the bill there is a 12-month sentencing enhancement for a person committing a DUI offense who is driving the wrong way on a multilane roadway that has a speed limit of 45 miles per hour or more. These are the highest risks of traffic stops for law enforcement as they try to attempt to stop the offender. This puts the officer and the public at risk.

The District and Municipal Court Association are happy with the provision of the bill that allows municipalities to establish their own DUI courts.

(In support with concerns) In regards to deferred sentencing, 99 percent of judges would agree that deferred sentencing needs to be clarified in the statute as deferred sentences are not allowed for DUI and physical control cases. Deferred prosecution is completely different from deferred sentencing. Deferred prosecution is highly regulated, requires treatment, and a person is limited to having one deferred prosecution in his or her lifetime.

Deferred sentences work quite differently. In a deferred sentence, the defendant pleads guilty and a judge defers the sentence. There is no regulation as to how long a person can stay on a deferred sentence, there is no regulation as to what happens during the deferral, and there is no regulation as to how many deferred sentences a person may receive in his or her lifetime or at any one time. If a person completes his or her deferred sentence, then the judge dismisses the case and vacates the person's guilty plea. If a judge gives a deferred sentence on a DUI crime then the person no longer has a prior offense on his or her record, there is no prior offense on the record for felony DUI purposes, and there is no enhancement for being impaired if the person ends up killing someone at a later date. This bill clarifies that DUI and physical control crimes are not available for deferred sentences. Prior DUI offenses that have been pleaded down will also count as prior offenses under the bill.

The bill clarifies the scoring for felony DUI offenses. Any felony DUI that is committed will stay in a person's history for future felony DUI scoring.

The SRA scoring provisions need to be slightly clarified. In addition, the sentencing enhancement language in the bill, relating to when a person commits a DUI offense while driving the wrong way on a multilane roadway, may also need to be amended in order to accomplish its intended purpose.

(Opposed) There are over 40 years of studies relating to cannabis and driving. As a matter of fact, the Grutenhermen study shows that at five nanograms of THC concentration there is no impairment; in other words, a person is driving without impairment.

When the first round of driving under the influence of drugs (DUID) laws started, there was a pronounced decision to create more DUID laws. However, many of the DUID laws are

coming in without the science to support them. The laws are not based on impairment but based on use. This is just zero tolerance without providing the elements of public safety.

Persons Testifying: (In support) Representative Goodman, prime sponsor; Rob Sharpe and Rob Huss, Washington State Patrol; and Melanie Stewart, District and Municipal Court Judges Association.

(In support with concerns) Amy Freedheim, King County Prosecutor's Office.

(Opposed) Steve Shrich and John Worthington, Cannabis Action Coalition.

Persons Signed In To Testify But Not Testifying: None.