

HOUSE BILL REPORT

HB 2030

As Reported by House Committee On:
Public Safety

Title: An act relating to driving while under the influence of intoxicating liquor or drugs.

Brief Description: Modifying provisions that address impaired driving.

Sponsors: Representatives Morrell, Klippert, Goodman, Short, Van De Wege, Warnick, Bergquist, Harris, Hansen, Zeiger, Tharinger, Hurst, Dahlquist, Fitzgibbon, Kochmar, Fey, Hope, Kirby, O'Ban, Seaquist, Haler, Habib, Hargrove, Sells, Smith, Stanford, Sullivan, Maxwell, McCoy, Springer, Hunt, Liias, Stonier, Pollet, Ryu, Farrell, Orwall, Moscoso and Upthegrove; by request of Governor Inslee.

Brief History:

Committee Activity:

Public Safety: 4/18/13, 5/22/13 [DPS].

Brief Summary of Substitute Bill

- Increases mandatory minimum sentences for Driving Under the Influence (DUI) and Physical Control (PC) offenses and periods of incarceration, treatment, and alcohol/drug monitoring for repeat offenders.
- Requires community custody supervision for felony level DUI offenders.
- Modifies provisions on negligent driving, mandatory arrests and booking, and probation.
- Changes ignition interlock device (IID) requirements, requires IIDs as a condition of release, provides for consideration of vehicle forfeiture for IID violations, and authorizes DUI vehicle drivers to take IID re-tests.
- Addresses impaired drivers who have a child passenger in the vehicle or drive the wrong way on a multi-lane roadway.
- Eliminates requirement to mark driver licenses of DUI offenders, and amends restriction on commercial driver licenses.
- Requires penalty assessments for various driving offenses to fund efforts to reduce impaired driving injuries.
- Establishes an Impaired Driving Work Group.

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.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Goodman, Chair; Roberts, Vice Chair; Klippert, Ranking Minority Member; Hayes, Assistant Ranking Minority Member; Holy, Hope, Moscoso, Pettigrew, Ross and Takko.

Minority Report: Do not pass. Signed by 1 member: Representative Appleton.

Staff: Yvonne Walker (786-7841).

Background:

Penalties for Driving Under the Influence/Physical Control of a Vehicle Under the Influence. A person can commit Driving Under the Influence (DUI) or being in Physical Control (PC) of a motor vehicle Under the Influence of intoxicating liquor or any drug if the person drives with a blood or breath alcohol concentration (BAC) of 0.08 or higher, under the influence of, or affected by liquor or any drug. A DUI/PC offense is punishable as a gross misdemeanor. It becomes a class C felony if a person has four or more prior offenses within 10 years.

If an offender is sentenced to the custody of the Department of Corrections (DOC) for a felony DUI/PC offense, the court must sentence the offender to community custody for 12-18 months, in addition to the terms of the sentence. The DOC utilizes a validated risk assessment and supervises offenders according to their risk level.

Two penalty enhancements apply to individuals 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 (IID) 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, and a public safety and education assessment (PSEA) equal to 70 percent of the fine is collected.

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 nonfelony offenses such as a DUI/PC.

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 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 electronic monitoring.

The court may waive EHM under certain circumstances, such as when the offender lacks a dwelling or telephone service. Whenever waived, the court must impose an alternative sentence that can include jail time, work crew, or work camp.

Negligent Driving. Negligent Driving, a misdemeanor offense, occurs when a person operates a vehicle in a manner that is both negligent and endangers or is likely to endanger any person or property, and when the person exhibits the effects of having consumed liquor or illegal drugs, or inhaled or ingested a chemical for its intoxicating or hallucinatory effects.

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 blood or breath test to determine BAC 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.

Arrest and Booking. 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 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. A police officer also may arrest a person when the officer has probable cause to believe that a person has committed or is committing a violation of certain traffic laws.

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.

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. Deferred sentences are not available for gross misdemeanor DUI or PC offenses.

Aggravating Circumstances. A court may depart from the standard sentencing range and impose an exceptional sentence above the range in cases with an aggravating circumstance. The SRA provides an exclusive list of aggravating circumstances which may be considered in imposing an exceptional sentence.

Ignition Interlock Device. When a person has his or her regular driver's license reinstated and an IID 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 vendor certifying that there have been no "incidents" in the four consecutive months prior to the date the requirement expires. The Washington State Patrol (WSP), by rule, requires that IIDs meet certain specifications and also provides standards for the certification, installation, repair, and removal of IIDs. An IID is not required on cars owned by the person's employer and driven as a requirement of employment during working hours.

Missouri v. McNeely. The Fourth Amendment prohibits unreasonable search and seizures. In the *Missouri v. McNeely* case, the United States Supreme Court found that taking a person's blood without warrant violates the person's Fourth Amendment rights and the exigency exception to the warrant requirement generally does not apply in these cases.

Driver's License. Marking of Drivers' License. If, after arrest for an impaired driving offense, a person is found to have an alcohol or drug concentration above the statutory limits, the DOL or the arresting law enforcement officer must mark the person's driver's license. The court must also mark a person's driver's license when a person is convicted of an offense for which withholding of the driving privilege is mandatory.

Commercial Driver's License. A person can be disqualified from driving a commercial motor vehicle for a period of no less than one year, if the DOL receives a report that the person has been convicted of certain offenses such as: a first violation of DUI; driving a commercial motor vehicle while the alcohol concentration in the person's system is 0.04 or more; or refusing to submit to a test to determine the person's BAC level.

Target Zero. Target Zero is the state's strategic highway safety plan that calls for reducing highway deaths to zero by the year 2030. The plan directs law enforcement officers to focus on violations proven to cause fatal or serious injury collisions such as driving while impaired.

Summary of Substitute Bill:

Penalties for Driving Under the Influence/Physical Control of a Vehicle Under the Influence. The penalties for a DUI/PC offense are amended to include an increased mandatory minimum period of jail, EHM, and either additional time in jail or 24/7 alcohol/drug monitoring (monitoring). In all instances, the court must order an expanded alcohol and drug assessment, and must order treatment as recommended by the agency conducting the assessment.

No Prior DUI or PC Offense. In an impaired driving case where a person has no prior DUI convictions and his or her alcohol concentration was of at least 0.15 percent, the two-day mandatory minimum incarceration period for the offense is clarified to mean 48 consecutive hours.

One Prior DUI or PC Offense. A person convicted of DUI or PC with a BAC under 0.15 percent, and who was convicted of one prior offense, must be sentenced to a mandatory minimum of 40 days in jail, EHM, and upon completion of the sentence, either 90 additional days of jail or 90 days of monitoring. A person convicted of DUI or PC who either refuses a breath or blood test or has a BAC of at least 0.15 percent, must be sentenced to a mandatory minimum of 55 days in jail, EHM, and, upon completion of the initial sentence, either 90 additional days of jail or 90 days of monitoring.

Two Prior DUI or PC Offenses. A person convicted of DUI or PC with a BAC under 0.15 percent, and who was convicted of two prior offenses, must be sentenced to a mandatory

minimum of 100 days in jail, EHM, and upon completion of the initial sentence either 180 additional days of jail or 180 days of monitoring. A person convicted of DUI or PC who either refuses a breath or blood test or has a BAC of at least 0.15 percent, must be sentenced to a mandatory minimum of 130 days in jail, EHM, and upon completion of the initial sentence either 180 additional days of jail or 180 days of monitoring.

Three or More Prior Offenses. Effective January 1, 2014, it is a seriousness level V, class C felony offense if a person is convicted of a DUI or PC offense and he or she has had three or more prior convictions. Regardless of risk level classification, the DOC must provide community custody supervision to all offenders sentenced to prison for a felony level DUI/PC, Vehicular Homicide, or Vehicular Assault offense.

Child in Vehicle. When setting penalties for DUI and PC offenses, the courts must particularly consider whether a child under the age of 16 years was in the vehicle at the time of the offense. The IID penalties and the fines for individuals convicted of an impaired driving offense when a child was in the vehicle are clarified to be in addition to all other impaired driving penalties. The fine for a DUI/PC offense with a child in the vehicle is exempt from the PSEA fee for other fines, forfeitures, and penalties.

A conviction for a DUI/PC offense committed while a child was in the vehicle must include the following sentence enhancements:

- 24 hours if the person had no prior offenses within seven years;
- five days if the person had one prior offense within seven years; or
- 10 days if the person had two prior offenses within seven years.

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. Felony DUI/PC offenses will not washout in scoring a subsequent felony DUI/PC offense.

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 Negligent Driving in the first degree, Reckless Driving, or Reckless Endangerment, when the original charge (which was pled down to a lesser charge) was filed as a DUI/PC offense or an equivalent offense, 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 type of alcohol monitoring device (instead of an alcohol detection breathalyzer). If a court determines that a device utilizing wireless reporting technology is reasonably available, the court may require the offender to obtain such a device during the period of EHM. In addition, whenever EHM is waived, the court must impose an alternative sentence that may include, but is not limited to, an IID. The county or municipality where the penalty is being imposed may impose an additional fee to cover EHM for indigent offenders.

Negligent Driving. It is Negligent Driving when a person operates a vehicle in a negligent manner while exhibiting the effects of consumed marijuana or any drug.

Conditions of Probation. Conditions of probation are expanded to include: (1) prohibiting an offender from driving without "both" a valid license and liability insurance; (2) prohibiting an offender from driving or being in physical control of a vehicle while having a THC concentration of 5.0 nanograms or higher in his or her system, within two hours of driving; and (3) requiring mandatory participation in monitoring for three months for the person's second DUI/PC conviction and six months for the person's third DUI/PC conviction.

Arrest and Booking. A law enforcement officer must arrest and take into custody a defendant, pending release on bail, personal recognizance, or a court order, when the officer has probable cause to believe that the defendant has committed a DUI/PC offense and the officer has knowledge that the defendant has had at least one prior DUI offense within the previous 10 years.

The list of traffic violations where a law enforcement officer can make an arrest upon probable cause is expanded to include situations where: (1) a juvenile under the age of 21 years is driving or is in physical control of a vehicle after consuming alcohol; and (2) any person driving, operating, or in physical control of a commercial motor vehicle while having alcohol or THC in his or her system.

DUI Courts. Municipalities may establish DUI courts or enter into cooperative agreements with counties that have DUI courts to provide DUI court services.

Deferred Sentences. Courts are explicitly prohibited from granting a deferred sentence for any DUI/PC gross misdemeanor offense.

Aggravating Circumstances. A court may consider as an aggravating factor that, during the commission of the DUI/PC offense, the defendant was driving in the opposite direction of the normal flow of traffic on a multi-lane highway with a speed limit of 45 miles per hour or greater.

Ignition Interlock Devices. *Ignition Interlock Re-Test.* An IID restriction imposed on a person must remain in effect until the DOL receives confirmation from the IID 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.

Ignition Interlock Certification Form. The WSP is authorized to create, by rule, the statement for certifying an IID. References to federal standards are removed.

The WSP may inspect IIDs in all vehicles despite where the installation took place. Any officer conducting field inspections of IIDs must report violations by IID program participants to the court. The WSP is immune from civil liability for damages resulting from activities under the IID program unless there was gross negligence or willful misconduct.

Operating an Employer's Vehicle. The DOL may not waive, and no employer may exempt, an ignition interlock requirement within the first 30 days following installation of an IID after a first offense or for the first 365 days after an IID has been installed for second or subsequent convictions.

Condition of Release. Upon a person's second or subsequent offense, as a condition of release, the defendant must have an IID installed or participate in 24/7 alcohol monitoring. The IID must be installed in the driver's vehicle within five business days. Courts must authorize the removal of the IID upon acquittal or dismissal.

Civil Forfeiture. The court must consider at the time of sentencing whether the defendant's vehicle is subject to forfeiture if the defendant has been found to have operated the vehicle without a required IID and if the forfeiture has not already occurred.

Missouri v. McNeely. References to mandatory blood draws are removed and fees are adjusted in provisions relating to implied consent and denying or revoking of a driver's license.

Driver's License. Provisions requiring 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.

Provisions relating to commercial drivers are expanded to include THC. 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 impaired with any measureable amount of THC in the person's system. Law enforcement must also issue an out-of-service order against the person.

Target Zero. Courts must impose a penalty assessment of \$100 on any person who is convicted for a violation of: Vehicular Homicide; Vehicular Assault; Hit and Run involving death, injury, a deceased person, or damage to unattended property; Driving While License Suspended; Attempting to Elude a Police Vehicle; DUI/PC; Racing of Vehicles on Highway; Circumventing an IID; Reckless Driving; DUI and PC while under age 21 years; and Negligent Driving in the first degree.

The penalty assessments must be forwarded to the State Treasurer and used solely for:

- traffic safety taskforces that provide education, prevention, and enforcement programs designed to reduce motor vehicle related deaths and serious injuries; or
- effective strategies to reduce motor vehicle related deaths and serious injuries, such as those listed in the Target Zero safety plan.

If a local jurisdiction does not have such a program, the city or county may use the penalty assessments to establish or contract for such programs. The penalty assessment cannot be used for indigent criminal defense.

24/7 Alcohol/Drug Monitoring. The 24/7 alcohol/drug monitoring is defined and may include monitoring by mandatory urine analysis tests ordered by the court. The court may condition any bond or pretrial release upon participation in the monitoring and payment of associated costs.

The Criminal Justice Training Commission (CJTC) in conjunction with the Washington Association of Sheriffs and Police Chiefs (WASPC) must administer and adopt policies for

the 24/7 alcohol/drug monitoring program. Costs for participating in the program must be paid by the offender. Each county and municipality where the program is being administered must determine the cost; however, each participant must pay an additional \$20 fee per month. The additional assessment will be deposited in the 24/7 Alcohol/Drug Monitoring Revolving Account created in the State Treasury and administered by the CJTC for monitoring for indigent offenders.

Local governments and the WASPC are immune from civil liability for damages arising from incidents involving offenders who are participating in the program, unless there was gross negligence or bad faith.

Work Group. An Impaired Driving Work Group (Work Group) is established to study effective strategies to reduce vehicle related deaths and serious injuries that are a result of impaired driving incidents. The Washington Traffic Safety Commission must convene the initial meeting. The members must select the chair. The Work Group must report its findings and recommendations to the Legislature by December 1, 2013.

Substitute Bill Compared to Original Bill:

The provisions were eliminated that: required that an IID be installed on a vehicle prior to its release from impoundment; required the DOL to issue vertically oriented driver's licenses; prohibited an offender from purchasing alcohol for 10 years due to a DUI or PC conviction; and amended the sentencing enhancement for an Attempting to Elude a Police Vehicle.

Provisions were added that: require mandatory IID installation and participation in alcohol/drug monitoring as a condition of release; require courts to consider whether a vehicle should be forfeited due to IID violations; include sentencing enhancements for DUI offenses occurring while a minor was present in the vehicle; expand the WSP's authority to inspect IIDs; require IIDs on employers' vehicles when the employee has been convicted of a DUI offense; require law enforcement officers to report IID violations to the court; remove references to mandatory blood draws; expand the Negligent Driving statute; amend alcohol/drug monitoring provisions and assessments used to fund monitoring for indigent offenders; authorize localities to impose a fee to help cover EHM services for indigent offenders; and create a Work Group to study impaired driving offenses. Other technical corrections and clarifications 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, except for sections 11, 28, and 29 relating to making a conviction for three or more prior DUI/PC offenses a class C felony offense, which take effect January 1, 2014.

Staff Summary of Public Testimony:

(In support) Over the past three years, there has been good work done in relation to impaired driving and as a result DUI deaths have declined dramatically. However, many have seen the devastations caused by impaired drivers, especially repeat DUI offenders. Swift, sure and certain consequences are the best way of getting people to change their behavior and that is why it is so important to increase arrests and IID installation as soon as possible. There are three main objectives of this: have IIDs installed immediately; give repeat offenders a choice between jail and monitoring/treatment; and prohibit repeat offenders from obtaining alcohol.

In 30 percent of the DUI cases, the offender that is arrested is not the registered owner of the vehicle. The requirement to have an IID installed during a vehicle's impoundment would be an inconvenience for the registered owner, but it will make that person think twice about loaning his or her vehicle in the future. However, it is now impossible for vendors to install an IID in a vehicle held in an impound lot. As an alternative, officers that make a DUI arrest should put a sticker over the car tabs, impound the vehicle, and require the defendant to get the vehicle registration renewed within two weeks, otherwise the registration expires.

The Legislature must act now to stop first time offenders from becoming repeat offenders. Similar to DUI courts, alcohol/drug monitoring and treatment should be put in place. The recent Medicaid expansion in the budget will help to cover the costs of treatment.

(In support with concerns) The timeframe and the installation of an IID in an impound lot is a concern. Also if the vehicle was towed to an IID vendor then there would be concerns surrounding a lien on the vehicle. The IID vendor would have to pay upfront costs to have the vehicle released from impoundment and then towed to the IID vendor's place of business. The IID vendor would have to store the vehicle and then recoup its costs by charging all expenses back to the customer. It becomes even more complicated if the vehicle has to be re-towed back to the impound lot after the IID installation. The current statute requiring a 12-hour hold on impounded vehicles needs to be protected, so any changes to the IID requirements should be put in a separate section.

(With concerns) The Legislature sends conflicting signals to society about what is acceptable. It recently authorized alcohol to be served in several public venues which are places where a person would have to drive. The vast majority of first-time offenders made a bad choice and the initial penalties imposed on these offenders often make a significant impact on them. This bill should focus on making an impact on repeat offenders by lowering the amount of prior offenses for a felony, increasing arrests, and requiring monitoring and IIDs. The question is whether the cost is worth it for the 35,000 first-time offenders each year.

Adequate resources for local law enforcement and prosecutors are a concern. The Legislature needs to make a choice between officers at a desk filing charges or on the streets making arrests. It is an admirable goal to get these cases into the system quickly but, in reality, requiring faster booking will not get the case into the system any faster.

The new 24/7 alcohol/drug monitoring program is a concern. The infrastructure is already in place and courts already have the ability to order it. As such, there is no need to create a new program. There are also concerns about retail clerks making sure that persons who are prohibited from purchasing alcohol do not receive it.

(Other) Since 2007 impaired driving offenses have been involved in almost half of crash-related fatalities in this state. Drug-impaired drivers are as common as drivers impaired by alcohol. This bill provides improved ignition interlock and monitoring requirements, and addresses repeat offenders. Roughly one out of every five drivers involved in a fatality crash has had a prior DUI. The removal of deferred sentencing ensures that DUI offenders do not escape sanctions.

The 24/7 alcohol/drug monitoring and other required treatment would be a great improvement. Prevention and treatment are the keys to reducing impaired driving. The required penalty assessments will help community-based traffic safety programs. Aligning the state's statutes on zero tolerance with federal standards, and increasing penalties for wrong-way driving and having a child in the vehicle are also good ideas. There is support for the provisions on vertical licenses but sanctions should be in the bill. The bill also cleans up many provisions and clarifies the WSP rulemaking authority but there are concerns about IID installations at impound lots.

Dealing with repeat offenders must be a priority and the best prevention is swift and certain punishment. There is also resource imbalance concerns between defense and prosecution in DUI cases as there are so many private defense counsels.

The requirement for an IID extension for a child in the vehicle at the time of the offense should be the responsibility of the DOL and not the courts. References to deferred sentences should be removed as to lessen confusion and improve consistency. The mandatory minimum terms in jail should be reviewed to ensure that they do not exceed the statutory maximum terms. The Negligent Driving statutes should be amended to include all drugs. A liability waiver for locals should be included. Sentencing and court costs should also be taken into consideration.

(Opposed) This bill will not work for non-alcohol violations because taking a blood test twice a day would be too costly. There is a disparity between treatment of alcohol and marijuana. Efforts should be focused on those that over-serve alcohol to patrons. The use of breathalyzer devices in taverns should be required. The focus should be on repeat offenders. There is no reputable scientific study that shows that marijuana consumption impacts driving. Alcohol is the only drug with a direct correlation between the amount consumed and impairment.

Persons Testifying: (In support) Representative Morrell, prime sponsor; Frank Blair, John Lane, Office of the Governor; Rob Huss, Washington State Patrol; Al Runte, Towing and Recovery Association of Washington; and Steve Luce, Coalition of Ignition Interlock Manufacturers.

(In support with concerns) Stu Halsan, Towing and Recovery Association of Washington.

(With concerns) Don Pierce, Washington Association of Sheriffs and Police Chiefs; Patricia Fulton, Washington Criminal Defense Lawyers and Washington Defenders Association; Mark Johnson, Washington Retail Association; Shankar Narayan, American Civil Liberties Union of Washington; and Holly Chisa, Northwest Grocery Association.

(Other) Melissa VanGorkom, Washington State Patrol; Brian Enslow, Washington State Association of Counties; Candice Bock, Association of Washington Cities; Steve Lind, Washington Traffic Safety Commission; Mark Eide, District and Municipal Court Judges Association; James McMahan, Washington Association of County Officials; and Tom McBride, Washington Association of Prosecuting Attorneys.

(Opposed) Arthur West; John Worthington and Steve Sarich, Cannabis Action Committee; and Brian Stone.

Persons Signed In To Testify But Not Testifying: None.