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**Public Safety Committee**

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**HB 2728**

**Brief Description:** Concerning impaired driving.

**Sponsors:** Representatives Goodman, Klippert, Smith, Morrell, Gregerson and Freeman.

**Brief Summary of Bill**

- Requires the court to notify the Department of Licensing (DOL) when an ignition interlock device (IID) restriction is imposed on a defendant and when such restriction is lifted.
- Requires the DOL to make or remove a notation on a defendant's driving record once it is notified by the court about the status of a defendant's IID restriction.
- Makes it a gross misdemeanor offense for a Driving Under the Influence (DUI) offender to request a third party to blow or otherwise exhale into an IID in order to enable him or her to circumvent the device.
- Prohibits law enforcement officers from drawing blood from a person suspected of DUI without consent, a warrant or exigent circumstances.
- Reallocates funding from the Washington Traffic Safety Commission (TSC) to the Washington Criminal Justice Training Commission (CJTC) for costs associated with the 24/7 Sobriety Program.
- Reallocates funding from the TSC to the County Criminal Justice Assistance Account for reimbursement of increased costs incurred as a result of mandatory arrests of repeat DUI offenders.

**Hearing Date:** 2/4/14

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

**Background:**

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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.*

In 2013 Engrossed Second Substitute Senate Bill 5912 (E2SSB 5912) (Chapter 35, Laws of 2013) was enacted that made numerous clarifications and sentencing enhancements to the impaired driving statutes including clarifying the Sentencing Reform Act scoring provisions, imposing mandatory sentences, adjusting statutorily imposed fines, expanding the list of aggravating circumstances, requiring alcohol assessments and treatment, and amending statutory provisions relating to ignition interlock devices (IID), electronic home monitoring devices, and commercial driver license restrictions.

Generally, 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.

#### Ignition Interlocks.

As a condition of release from custody before arraignment or trial, a defendant who has a prior DUI, PC, vehicular homicide, or vehicular assault offense must be ordered to have a functioning IID installed on his or her vehicle with proof filed with the court within five business days of the date of release, or comply with the 24/7 Sobriety Program, or both. A court must authorize the removal of the IID upon acquittal or dismissal of charges.

#### Ignition Interlock License.

Washington's implied consent law provides for the revocation of a licensee's driver's license where the licensee is arrested for DUI and refuses to submit to a blood or breath alcohol test. Following a license revocation, the licensee can apply for an ignition interlock driver's license (IIDL), which allows the licensee to lawfully operate a vehicle during the revocation. However, the IIDL statute precludes a licensee who obtains an IIDL from thereafter asserting the statutory right to judicial appeal from the administrative decision imposing the revocation. The Washington State Court of Appeals ruled (in *Nielsen v. Department of Licensing*) that the statute that requires a driver to waive his or her right to appeal a license suspension or revocation order from the DOL in order to receive an IIDL is unconstitutional. If a driver has been subject to an erroneous license suspension or revocation, he or she can now appeal this ruling as well as be able to continue driving while they appeal the suspension or revocation.

#### Tampering With an Ignition Interlock Device.

If a person is restricted to driving only with an IID, it is a gross misdemeanor offense for that person to tamper with the device, or to request a third party to tamper with the device, in order to circumvent the device.

#### Implied Consent.

Under the implied consent laws, a driver is presumed to have given consent to a BAC test if the driver is arrested for DUI. As such, any person who operates a vehicle in Washington is deemed to have given consent to a test of his or her breath for the purposes of determining the alcohol concentration, tetrahydrocannabinol (THC) concentration, or presence of any drug. Presently THC and other drugs cannot be measured or tested with a breath test.

The Fourth Amendment prohibits unreasonable search and seizures. A blood draw is a search, however, a blood draw is only constitutional when it is consensual, pursuant to a search warrant,

or in exigent circumstances. In the *Missouri v. McNeely* case, the United States Supreme Court found that taking a person's blood without warrant violates a person's Fourth Amendment right and the exigency exception to the warrant requirement generally does not apply in these cases (since metabolization of alcohol in the body does not by itself create an exigent circumstance). As a result, routine blood draws from a person suspected of DUI without consent or a warrant are unconstitutional, unless there is some special complicating factor to justify exigency.

#### Appropriations and Funding.

*The 24/7 Sobriety Program:* In 2013 pursuant to the enactment of E2SSB 5912 a sum of \$176,000 of the State General Fund for the fiscal year (FY) 2014, and \$176,000 of the State General Fund for the FY 2015, were appropriated to the TSC for the 24/7 Sobriety Program. Funding was to be distributed to counties and cities that participate in the 24/7 Sobriety Program as well as the Washington Association of Sheriffs and Police Chiefs for ongoing administration costs associated with the 24/7 Sobriety Program. The 24/7 Sobriety Program is a 24-hour, seven days a week, Sobriety Program in which a DUI offender submits to testing in order to determine the presence of alcohol, marijuana, or any controlled substance in the participant's body.

*Mandatory Arrests:* Pursuant to the enactment of E2SSB 5912, 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. During the 2013 legislative session, a sum of \$270,000 of the State General Fund for the FY 2014, and \$360,000 of the State General Fund for the FY 2015, were appropriated to the TSC for allocation to counties for the increased incarceration costs incurred as a result of the mandatory arrests of repeat offenders.

#### **Summary of Bill:**

##### Ignition Interlocks.

In instances where a defendant is required to have a functioning IID installed on his or her vehicle as a condition of release, the court must immediately notify the Department of Licensing (DOL) when the IID restriction is imposed as a condition of release. The DOL subsequently must add a notation to the person's driving record noting the restriction. Once the IID restriction is lifted, the court must immediately notify the DOL regarding the lifting of the restriction and the DOL must immediately release any notation on the person's driving record relating to the IID restriction.

Ignition Interlock License. As a result of the *Nielsen v. Department of Licensing* decision, the statutory provisions that prohibited a licensee from appealing an administrative decision imposing a license revocation is eliminated. A driver who has been subject to an erroneous license suspension or revocation can now appeal this ruling as well as be able to continue driving during the appeal process.

##### Tampering with an Ignition Interlock Device.

If a person is restricted to driving only with an IID, it is a gross misdemeanor offense for that person to direct, authorize, or request another person to blow or otherwise exhale into the IID in order to circumvent the device.

Implied Consent.

When an arresting officer has reasonable grounds to believe a person has been driving or was in actual physical control of a (commercial or noncommercial) motor vehicle while under the influence of intoxication liquor or drugs, the arresting may require that a breath or blood test be administered pursuant to a search warrant, a valid waiver of the warrant requirement, or when exigent circumstances exist. In addition, references to the testing of a person's breath for purposes of determining the THC concentration or the presence of any drugs are removed from the Implied Consent statute.

Appropriations and Funding.

*The 24/7 Sobriety Program:* All funding originally appropriated to the TSC for the 24/7 Sobriety Program is reallocated to the Washington Criminal Justice Training Commission (CJTC) instead. The CJTC is responsible for distributing the grants to counties and cities participating in the 24/7 Sobriety Program.

*Mandatory Arrests:* All funding originally appropriated to the TSC for allocation to counties for the increased incarceration costs incurred as a result of mandatory arrests of repeat DUI offenders is reallocated for expenditure into the County Criminal Justice Assistance Account. The State Treasurer must make quarterly distributions to local jurisdictions for reimbursement of increased costs incurred as a result of the mandatory arrests of repeat DUI offenders.

Technical Amendments.

Other technical corrections and clarifications are made to the impaired driving statutory provisions enacted in 2013 in E2SSB 5912.

**Appropriation:** None.

**Fiscal Note:** Requested on January 30, 2014.

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