

HOUSE BILL REPORT

E2SSB 5912

As Passed House:
June 27, 2013

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

Brief Description: Concerning driving under the influence of intoxicating liquor or drugs.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Padden, Kline and Conway; by request of Governor Inslee).

Brief History:

Committee Activity:

None.

Second Special Session

Floor Activity:

Passed House: 6/27/13, 92-0.

Brief Summary of Engrossed Second Substitute Bill

- Requires sobriety monitoring for repeat offenders that commit Driving Under the Influence (DUI) and Physical Control (PC) offenses.
- Requires community custody supervision for felony level DUI offenders.
- Modifies provisions on negligent driving, mandatory arrests, and booking.
- 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.
- Establishes an Impaired Driving Work Group.

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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.

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.

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 Engrossed Second 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 24/7 sobriety monitoring (monitoring). In all instances, the court must order an expanded alcohol assessment, and must order treatment if deemed appropriate by 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 and who has been previously convicted of one prior offense may be sentenced to 24/7 sobriety program monitoring in lieu of EHM.

Two Prior DUI or PC Offenses.

A person convicted of DUI or PC and who has been previously convicted of two or three prior offenses must be sentenced to six months of 24/7 sobriety program monitoring in addition to mandatory incarceration and EHM.

Four or More Prior Offenses.

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. 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.

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.

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 sobriety program monitoring. The IID must be installed in the driver's vehicle within five business days or as soon thereafter as determined by the court. 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.

Several references to mandatory blood draws are removed 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 measurable amount of THC in the person's system. Law enforcement must also issue an out-of-service order against the person.

Target Zero.

Funds from the Ignition Interlock Device Revolving Account may be used to fund Target Zero activities.

24/7 Sobriety Monitoring.

The 24/7 sobriety program is defined and must be administered by the Washington Traffic Safety Commission. Participants who violate the terms of the program will be subject to sanctions from a written warning up to serving his or her entire remaining sentence. 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.

Appropriation: The sum of \$176,000 of the State General Fund for the fiscal year ending June 30, 2014, and \$176,000 of the State General Fund for the fiscal year ending June 30, 2015, are appropriated to the Washington Traffic Safety Commission for the 24/7 sobriety program. The sum of \$270,000 of the State General Fund for the fiscal year ending June 30, 2014, and \$360,000 of the State General Fund for the fiscal year ending June 30, 2015, are appropriated to the Washington Traffic Safety Commission for allocation to counties for the increased incarceration costs incurred as a result of mandatory arrest of repeat offenders.

The sum of \$1.2 million of the State General Fund appropriation for the fiscal year ending June 30, 2014, and \$1.2 million of the State General Fund appropriation for the fiscal year ending June 30, 2015, are provided as a grant to the Washington Association of Prosecuting Attorneys for funding up to 11 deputy prosecuting attorney positions focused upon rush filing charges against repeat DUI offenders.

The sum of \$100,000 of the State General Fund for the fiscal year ending June 30, 2014, and \$122,000 of the State General Fund for the fiscal year ending June 30, 2015, are appropriated to the Department of Corrections for the increased supervision of offenders.

The sum of \$423,000 of the State General Fund for the fiscal year ending June 30, 2014, \$814,000 of the State General Fund for the fiscal year ending June 30, 2015, and \$1.4 million of the State General Fund federal appropriation, are appropriated to the Department of Social and Health Services to provide court ordered chemical dependency assessment and treatment services for low-income or Medicaid eligible repeat DUI offenders.

Fiscal Note: Available. New fiscal note requested on June 27, 2013.

Effective Date: This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for sections 27, 28, and 30 through 32 relating to the 24/7 sobriety program, which take effect January 1, 2014.