

SENATE BILL REPORT

SB 5902

As of April 18, 2013

Title: An act relating to driving under the influence.

Brief Description: Relating to driving under the influence.

Sponsors: Senators Padden and Kline.

Brief History:

Committee Activity: Law & Justice: 4/18/13.

Brief Summary of Bill

- Courts are prohibited from deferring DUI sentences.
- Prior DUI offenses are always counted in the offender score.
- Driving the wrong way to the normal flow of traffic is considered during sentencing.
- After July 1, 2015, a fourth DUI offense is a felony.
- First refusal of breath or blood test is an infraction. Second or subsequent refusal is a gross misdemeanor.
- Civil vehicle forfeiture for operating a vehicle without an interlock.
- Unlawful to consume, purchase, or sell alcohol to a person with a marked driver's license or identicard, effective July 1, 2015.
- A statewide 24/7 sobriety program is created, effective January 1, 2015.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Aldo Melchiori (786-7439)

Background: A person commits driving under the influence (DUI) or being in physical control of a motor vehicle under the influence (PC) of intoxicating liquor or any drug when the person drives with a blood or breath alcohol concentration (BAC) of 0.08 percent or higher, or is under the influence of or affected by liquor or any drug. A DUI or PC offense is

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punishable as a gross misdemeanor. It becomes a class C felony, ranked at level V on the sentencing grid, if a person has four or more prior offenses within ten years.

Sentencing Reform Act (SRA) Scoring. Under 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 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 or 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 ten years. A prior offense is within ten years if the arrest for a prior offense occurred within ten years of the arrest for the current offense. Prior offenses include convictions for: (1) DUI or PC; (2) vehicular homicide and vehicular assault if either was committed while under the influence; (3) negligent driving after having consumed alcohol – known as 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 or 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.

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 the following: (1) not driving without a valid license and proof of financial responsibility for the future; (2) not driving while having a BAC of 0.08 percent or more within two hours after driving; and (3) not refusing to submit to a 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, permit, or privilege to drive.

Electronic Home Monitoring (EHM). The mandatory minimum penalties for a DUI or PC offense vary depending on the person's BAC and whether the person has prior offenses. The mandatory minimum penalties may include EHM to be paid for by the offender. The court may also require the offender's EHM device to include a breathalyzer and may restrict the amount of alcohol the offender may consume during the time the offender 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.

Civil Forfeiture. Upon arrest for a second or subsequent prior DUI or PC offense within seven years, and the offender was provided with written notice, the offender's vehicle is subject to seizure and forfeiture. Persons with an ownership right, including a community

property interest, or financial interest may request a hearing. The hearing is before the chief law enforcement officer of the seizing agency or administrative law judge, but the proceeding may be removed to a court with jurisdiction. If the vehicle is forfeited, the seizing agency may sell it, retain it for official use, or transfer it to another agency for enforcement of traffic laws. Of the net proceeds of a sale, 10 percent are remitted to the state Treasurer and deposited in the state general fund.

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. 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 may be imposed. Generally, deferred sentences are not available for gross misdemeanor DUI or PC offenses.

Arrest Without Warrant. A police officer with probable cause to believe that a person 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. 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.

Ignition Interlock Device. The Washington State Patrol (WSP), by rule, provides standards for the certification, installation, repair, and removal of ignition interlock devices. Under WSP rules, the ignition interlock device must meet certain specifications. When a person has their 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 were no incidents in the four consecutive months prior to the date the requirement expires. An incident is an attempt to start the vehicle with a BAC of 0.04 percent or higher; failure to take or pass any required re-test; or 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, DOL must notify the person in writing of its intent to suspend, revoke, or deny the person's license or privilege to drive, and 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 DOL receives a report that the person was convicted of a first violation of DUI, driving a commercial motor vehicle while the person's BAC is 0.04 percent 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 not 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 the person's system.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Proposed First Substitute): A police officer must arrest and take into custody, pending release on bail, personal recognizance, or court order, a person without warrant when the officer has probable cause to believe that the person has violated the DUI or PC laws and has a prior offence for DUI or PC within ten years.

A person who refuses to take a breath or blood test is guilty of a traffic infraction and is assessed a \$500 penalty, not including statutory assessments. A second or subsequent refusal is a gross misdemeanor.

The scoring provisions under SRA are clarified. If a defendant's present conviction is for a felony DUI or 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 or PC convictions. The definition of a prior offense 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 or PC, or an equivalent ordinance, or a vehicular homicide, or vehicular assault offense.

After July 1, 2015, a fourth DUI offense is a class felony ranked at level V on the sentencing grid. Because all prior felony and non-felony convictions for DUI and PC offenses are scored, the standard range sentence is 22-29 months of incarceration if the person has three prior DUI or PC offenses and no other scored offenses.

During sentencing, the court may consider 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.

The Department of Corrections (DOC) must supervise offenders convicted of vehicular homicide, vehicular assault, felony DUI, and felony PC. Periodic random inspections of an ignition interlock device (IID) installed on a vehicle must be conducted and non-functioning IIDs must be reported to DOL.

An identicard or driver's license issued to a person convicted of three or more prior violations must include a visible marker for a period of time determined by the court. The marker must clearly identify that the driver's license was suspend, revoked, or denied for a third or subsequent DUI or PC violation. It is a misdemeanor to sell liquor or marijuana to a person or permit consumption on the premises by a person who has a marked identicard or driver's license. It is a gross misdemeanor for a person with a marked identicard or driver's license to

possess, consume, or acquire liquor or marijuana. It is unlawful for a person who has a marked identicard or driver's license to be in a public place while exhibiting the effects of consumption.

A person is disqualified from driving a commercial motor vehicle for a minimum of one year if a report is received by DOL that the person was 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 the person's system. DOL may not waive and no employer may exempt an ignition interlock requirement for an employer-owned vehicle within the first 30 days following conviction and sentencing.

A vehicle may be subject to civil forfeiture for a second or subsequent prior offense, within seven years, of driving a motor vehicle without a required ignition interlock device.

The statewide 24/7 sobriety program is established and administered by the Attorney General, effective January 1, 2015. The Attorney General may adopt rules for the administration of the 24/7 sobriety program to: (1) regulate the nature, method, and manner of testing; (2) provide for procedures and an apparatus for testing including electronic monitoring devices and ignition interlock devices; and (3) require the submission of reports and information by law enforcement agencies within this state.

The 24/7 sobriety account is created to defray the costs of operating the program. The account can receive funds from a variety of sources, including activation and users fees. Fee ranges are set by rule annually. Funds from the account are used to defray reoccurring costs of the program. Fees collected by DOC are deposited in the general fund.

The program may include twice-per-day testing, drug-patch testing, urinalysis testing, electronic monitoring devices, electronic alcohol monitoring device testing, or ignition interlock devices. Participants' payment of fees are collected to fund the program.

Each county, through its sheriff, may participate in the 24/7 sobriety program. If a sheriff is unwilling or unable to participate in the 24/7 sobriety program, the sheriff may designate an entity willing to provide the service. If twice-per-day testing is ordered, the sheriff, or designated entity, must establish the testing locations and times for each county but must have at least one location and two daily testing times approximately 12 hours apart.

The court may condition any bond, pretrial release, granting of a suspended imposition of sentence, suspended execution of sentence, probation, or release upon participation in the 24/7 sobriety program and payment of associated costs and expenses. DOC may condition release upon participation in the 24/7 sobriety program and payment of associated costs and expenses.

Municipalities may establish and operate DUI courts if authorized by the presiding judge of the county district court. Courts are prohibited from deferring sentences for DUI or PC of intoxicating liquor or any drug.

Funds from the ignition interlock device revolving account may be used to provide field inspections of vehicles with ignition interlock devices that registered a failed start attempt.

Marijuana and THC are added to a number of statutes dealing with DUI and PC.

Appropriation: None.

Fiscal Note: Requested on April 15, 2013.

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony: PRO: This bill addresses prevention, intervention, and punishment. Certainty of quick punishment is more effective in reducing recidivism than punishment severity. The 24/7 sobriety program should be started as a pilot program in a few counties with the interest and capabilities to make it a success. The vast majority of offenders change their behavior after their first arrest. The state's increased efforts should be focused on second and subsequent offenders. Counties will need liability protection to encourage their participation in the 24/7 program. Ignition interlock use reduces recidivism. Most wrong-way drivers on our highways are driving impaired. It is essential that we do more to address this problem as soon as possible. The use of electronic monitoring devices is cost effective. DUI courts are a proven countermeasure to recidivism. The restriction on deferred sentences will ensure that repeat offenders do not escape sanctions and cannot avoid increased penalties.

CON: The 24/7 program may work for people with the money to pay the fees, but indigent offenders will not have that choice. This is an effort to recriminalize marijuana. Medical marijuana patients will face prosecution when there is no evidence that the bill does not distinguish between first-time offenders and repeaters. Retailers will need to check the identification of every single patron if this bill passes. If the person uses a passport, military identification, or other form of picture identification, this provision will be ineffective.

OTHER: Alcohol supervision technology is evolving quickly, so the law should allow flexibility in regard to testing techniques. It is difficult to get police reports to the prosecutor quickly because the reports are complex and it sometimes takes time to obtain test results. If law enforcement is not able to complete their reports in a timely fashion, direct filing of charges will not get offenders in court any faster. The bill currently does not allow cities to participate in the 24/7 program. Penalties for refusing to take a breath test is not necessary because severe consequences already exist and this would invite litigation. Increased incarceration costs will require funding. A focus on repeat offenders would help control costs. Resources to enforce existing laws need to be increased. Laws should be designed to work well in both large and small counties. Officers often do not have accurate criminal history information at the roadside. There is no need for an ignition interlock if the offense was for an impairment caused by marijuana.

Persons Testifying: PRO: Shelly Baldwin, Steve Lind, WA Traffic Safety Commission; Rob Sharp, Rob Huss, WSP; Brian Moran, Office of the Attorney General; Stu Halsan,

Towing and Recovery Assn.; Al Runte, Ibsen Towing; John Lane, Governor's Office; Seth Dawson, WA Assn. for Substance Abuse Prevention.

CON: Cody Arledse, United Food and Commercial Workers 21; Steve Sarich, Arthur West, Cannabis Action Coalition; John Worthington, Brian Stone, citizens.

OTHER: Judge Sam Meyer, District and Municipal Court Judges Assn.; Don Pierce, WA Assn. of Sheriffs and Police Chiefs; Tom McBride, WA Assn. of Prosecuting Attorneys; Patricia Fulton, WA Assn. of Criminal Defense Lawyers, WA Defender's Assn.; Candice Bock, Assn. of WA Cities; Shankar Narayan, American Civil Liberties Union-WA; Brian Enslow, WA State Assn. of Counties; Steve Luce, Coalition of Ignition Interlock Manufacturers; Bruce Beckett, WA Restaurant Assn.; James McMahan, Assn. of County Officials; Mark Johnson, WA Retail Assn.