
Public Safety Committee

HB 2700

Brief Description: Concerning impaired driving.

Sponsors: Representatives Goodman, Klippert, Orwall, Hayes, Kuderer, Pettigrew, Muri, Ortiz-Self and Kilduff.

Brief Summary of Bill

- Makes clarifications to the 24/7 Sobriety Account.
- Prohibits the Department of Licensing (DOL) from destroying records relating to convictions for Reckless Driving or Negligent Driving in the first degree if the offense was originally charged as a driving under the influence (DUI) offense.
- Authorizes the DOL to suspend a person's driver's license when a person served with a traffic-related criminal complaint willfully fails to appear at a requested hearing for a moving violation.
- Clarifies that the sentencing enhancement for a Vehicular Homicide-DUI offense is mandatory and it must be served consecutively to the standard sentence and any other impaired driving enhancements.
- Removes the July 1, 2016, expiration dates thereby allowing health care assistants to continue to perform blood draws indefinitely.
- Exempts law enforcement officers from the requirement of keeping a person in custody, believed to have committed a DUI violation, if the person requires immediate medical attention and is admitted to a hospital.
- Requires DUI Victim Impact Panels (VIP) to use in-person speakers for VIP sessions, however the in-person presentations may be supplemented with a limited amount of prerecorded videos.
- Authorizes the DOL to waive the requirement for written verification of an ignition interlock device (IID) installation from an IID company if the DOL determines that an IID device previously verified on a person's vehicle has been installed on a vehicle owned or operated by the person and is still installed and functioning.

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.

- Reduces the time for which: (1) a temporary driver's license is valid; (2) a person arrested for DUI must request a hearing from the DOL regarding his or her license suspension; and (3) a hearing must be held.

Hearing Date: 1/29/16

Staff: Yvonne Walker (786-7841).

Background:

The 24/7 Sobriety Program.

The pilot 24/7 Sobriety Program is a 24-hour and seven-day a week sobriety program in which a participant submits to the testing of the participant's blood, breath, urine, or other bodily substances in order to determine the presence of alcohol, marijuana, or any controlled substance in the participant's body. Participants pay a user fee to participate in the program.

The 24/7 Sobriety Account (Account) in the State Treasury defrays the costs of operating the Program. The Account is a Treasury Trust Fund that receives funds from a variety of sources, including activation and users fees. Interest earned by the Account must be retained in the Account.

Destruction of Driving Records.

The Department of Licensing (DOL) cannot destroy a person's driving record that includes Driving Under the Influence (DUI), Physical Control, Vehicular Homicide and Vehicular Assault DUI convictions and must maintain such records permanently on file. However, the DOL may, within 15 years from the date of conviction, destroy records relating to convictions for Reckless Driving or Negligent Driving in the first degree if the offense was originally charged as a DUI offense.

License Suspensions by the Department of Licensing.

There are numerous circumstances, both criminal and noncriminal, under which the DOL is required by statute to suspend or revoke a person's driver's license. For instance, a person's license can be suspended when the DOL receives notice from the court that a person has failed to appear at a requested hearing for a moving violation, failed to comply with the terms of a notice of traffic infraction or citation, failed to respond to a notice of traffic infraction for a moving violation, or when the person has been convicted of a DUI offense. The DOL has the authority to suspend a person's license for failure to appear at a hearing that was initiated as a criminal citation or as a traffic infraction (which are non-criminal offenses) by a law enforcement officer; but the DOL does not have the authority to suspend a person's license for "failure to appear" on a case that was initiated as a criminal complaint by a prosecutor. Generally, the suspension remains in effect until the DOL has received a certificate from the court showing the case has been adjudicated.

A criminal complaint is generally a court document filed that accuses or charges a defendant with committing a crime. Criminal complaints are usually filed by the prosecutor in cooperation with law enforcement.

Washington v. Conover.

Under the Sentencing Reform Act, the court must impose imprisonment in addition to the standard sentencing range if specific conditions for sentencing enhancements are met. For example, sentencing enhancements may apply if the offender committed: (1) certain felonies while armed with a firearm or deadly weapon; (2) certain felonies while incarcerated; (3) certain drug offenses in drug-free zones; (4) a felony crime that was committed with sexual motivation; or (5) Vehicular Homicide-DUI. In the case of a person committing a Vehicular Homicide-DUI offense the court must impose an additional two-year sentencing enhancement for each prior DUI-related offense.

The Washington Supreme Court, in *Washington v. Conover*; questioned whether drug-free zone enhancements in statute require the courts to run such: (1) enhancements consecutively only to the drug crime sentence it enhances; or (2) multiple enhancements on different counts consecutively to each other. The Washington Supreme Court found that the current statutory language relating to sentence enhancements in drug-free zones was ambiguous.

Phlebotomists.

When a blood test is administered, the withdrawal of blood for the purpose of determining its alcoholic or drug content may only be performed by statutorily authorized professionals including but not limited to physicians, nurses, physician assistants, paramedics, and medical assistant-certified or medical-assistant phlebotomists. Until July 1, 2016, health care assistants may also perform blood draws; thereafter the existing health care assistant credential will be eliminated. Persons certified as health care assistants will automatically be converted to medical assistants upon renewal of their certifications.

Arrest and Held in Custody.

A law enforcement officer must arrest (without warrant) and keep in 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 offense and the officer has knowledge that the defendant has had at least one prior DUI offense within the previous 10 years.

Victim Impact Panels.

A person convicted of DUI is subject to criminal sanctions, including monetary penalties, mandatory jail time, and the suspension of the person's driver's license. In addition, a person convicted of DUI may be ordered to attend a Victim Impact Panel (VIP) which is an educational program that focuses on "the emotional, physical, and financial suffering of victims injured by persons convicted of DUI."

The Washington Traffic Safety Commission maintains a registry of qualified VIPs and may work with VIP organizations to develop the registry. When a court requires an offender to attend a VIP, the court may refer the offender to a VIP listed on the registry. To be listed on the registry, the VIP:

- must address the effects of impaired driving and address alternatives to drinking and driving;
- should strive to have at least two different speakers, one of whom is a victim survivor, to present their stories in person for at least 60 minutes;
- must have policies and procedures to recruit, screen, train, and provide feedback and support to the panelists;

- must charge a reasonable fee to persons required to attend, unless ordered otherwise by the court;
- must have a policy to prohibit admittance of anyone under the influence or anyone whose actions or behavior are inappropriate;
- must maintain attendance records for at least five years;
- must make reasonable efforts to use a facility that meets standards established by the Americans with Disabilities Act;
- may provide referral information to other community services; and
- must have a designated facilitator responsible for communicating with the courts and probation departments regarding a person's attendance and must be responsible for compliance with the minimum statutory standards.

Crossing of a Lane.

The Washington Court of Appeals in *State v. Tonelli-Prado*, addressed the issue of whether a brief crossing of a traffic lane is a sufficient basis to conduct a traffic seizure for a lane violation under the statute. That statute provides that a "vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety." The court found that brief incursions are to be expected when driving and therefore are not grounds for a traffic infraction as long as there is no danger to other vehicles.

Ignition Interlock.

The mandatory minimum penalties for a DUI offense vary depending on the person's breath alcohol concentration (BAC) and "prior offenses." Penalties may include suspension of the person's driver's license by the DOL. A person's license may be suspended based on the criminal conviction or an administrative suspension based on, among other things, the person's refusal to submit to a BAC test.

An ignition interlock license (IIL) authorizes a person to drive a noncommercial vehicle with an ignition interlock device (IID) while his or her regular driver's license is suspended. If a person's license is suspended or revoked due to a DUI violation and the person is required to drive only a vehicle with an functioning IID, the DOL must determine the person's eligibility for re-licensing based upon written verification from the company that it has installed the required IID on the vehicle owned or operated by the person seeking license reinstatement or a new license. The reissue fee for a new license is \$150.

After a person's regular license is reinstated, the person must drive with an IID for one year, five years, or 10 years, depending on whether the person was previously restricted. This requirement is not related to the IIL. An IID is not required on cars owned by the person's employer and driven as a requirement of employment during working hours.

License Suspension of Persons Arrested for DUI.

When a person is arrested for a DUI violation, the arresting officer must take certain steps, including serving notice to the driver that his or her license has become a temporary driver's license. The temporary license is valid for 60 days from the date of arrest or until the suspension of the person's license is sustained at a DOL hearing, whichever occurs first.

Within 20 days of arrest, the person may request a DOL hearing to contest the license

suspension. The hearing must be held within 60 days after arrest. An administrative suspension is based on either refusing to take the breath or a BAC test when arrested or having a BAC of .08 or higher or a blood THC (tetrahydrocannabinol) concentration of 5.0 or more. Administrative suspension periods last from 90 days to two years, depending on whether the driver refused the BAC and whether there have been prior incidents.

Summary of Bill:

The 24/7 Sobriety Program.

It is clarified that the Account is in the custody of the State Treasurer and it is added to the list of other accounts that are statutorily authorized to retain their proportionate share of earnings based upon the Account's average daily balance.

Destruction of Driving Records.

The DOL cannot destroy records relating to convictions for Reckless Driving or Negligent Driving in the first degree, if the offense was originally charged as a DUI offense.

License Suspensions by the Department of Licensing.

The DOL is authorized to suspend a person's driver's license when it receives notice from the court that a person served with a traffic-related criminal complaint willfully failed to appear at a requested hearing for a moving violation or failed to comply with the terms of the notice of a traffic-related criminal complaint for a moving violation.

Washington v. Conover.

It is clarified that Vehicular Homicide-DUI sentence enhancements are mandatory, must be served in confinement, and they must be served consecutively to the person's standard sentence and any other impaired driving enhancements. However, the offender may be granted an extraordinary medical placement.

Phlebotomists.

The July 1, 2016, expiration date is eliminated thereby allowing professionals with a health care assistant title to continue to perform blood draws indefinitely.

Arrest and Held in Custody.

A law enforcement officer is exempt from the requirement to keep in custody a person, believed to have committed a DUI violation, if the person requires immediate medical attention and is admitted to a hospital.

Victim Impact Panels.

The requirements for VIPs listed on the registry are amended. A VIP must use in-person speakers for a minimum of 60 minutes of presentation during a session. The VIP may supplement the in-person presentations with prerecorded videos, however the videos shown may not exceed 15 minutes in length.

Crossing of a Lane Violation.

The statute referencing a lane violation is clarified by requiring that a driver must drive a vehicle entirely within a single lane (the reference to "as nearly as practicable" is eliminated).

Ignition Interlock.

In determining a person's eligibility for re-licensing, the DOL may waive the requirement for written verification of IID installation from the IID company if the DOL determines to its satisfaction that an IID device previously verified as having been installed on a vehicle owned or operated by the person is still installed and functioning.

License Suspension of Persons Arrested for DUI.

Effective January 1, 2019, a temporary license belonging to a person arrested for a DUI violation is valid for 30 days (instead of 60 days) from the date of that person's arrest. In addition, the time period for when a person must request a hearing after being arrested for DUI is shortened from 20 days to seven days. Unless otherwise agreed to by the DOL and the person, the DOL must give five days advanced notice of the hearing to the person. The hearing must be held within 30 days (instead of 60 days), excluding weekends and legal holidays.

Appropriation: None.

Fiscal Note: Requested on proposed substitute bill on January 25, 2016.

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