

# HOUSE BILL REPORT

## ESHB 2700

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### As Passed Legislature

**Title:** An act relating to impaired driving.

**Brief Description:** Concerning impaired driving.

**Sponsors:** House Committee on Public Safety (originally sponsored by Representatives Goodman, Klippert, Orwall, Hayes, Kuderer, Pettigrew, Muri, Ortiz-Self and Kilduff).

**Brief History:**

**Committee Activity:**

Public Safety: 1/29/16, 2/3/16 [DPS];

Transportation: 2/8/16, 2/9/16 [DPS(PS)].

**Floor Activity:**

Passed House: 2/17/16, 97-1.

Senate Amended.

Passed Senate: 3/9/16, 49-0.

House Concurred.

Passed House: 3/10/16, 80-17.

Passed Legislature.

### Brief Summary of Engrossed Substitute Bill

- 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 the sentencing enhancement for Vehicular Homicide-DUI offenses.
- Exempts law enforcement officers from the requirement of arresting and keeping a DUI defendant in custody 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 which may be supplemented with limited prerecorded videos.

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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.*

- Authorizes the DOL to waive the requirement for written verification of an ignition interlock device (IID) installation from an IID company in certain circumstances.
- 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.
- Makes changes to the 24/7 Sobriety Program and Account.

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## HOUSE COMMITTEE ON PUBLIC SAFETY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Goodman, Chair; Orwall, Vice Chair; Klippert, Ranking Minority Member; Hayes, Assistant Ranking Minority Member; Appleton, Griffey, Moscoso, Pettigrew and Wilson.

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

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## HOUSE COMMITTEE ON TRANSPORTATION

**Majority Report:** The substitute bill by Committee on Public Safety be substituted therefor and the substitute bill do pass. Signed by 23 members: Representatives Clibborn, Chair; Farrell, Vice Chair; Fey, Vice Chair; Moscoso, Vice Chair; Hargrove, Assistant Ranking Minority Member; Harmsworth, Assistant Ranking Minority Member; Bergquist, Gregerson, Hayes, Hickel, Kochmar, McBride, Moeller, Morris, Ortiz-Self, Pike, Riccelli, Rodne, Rossetti, Sells, Stambaugh, Tarleton and Young.

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

**Minority Report:** Without recommendation. Signed by 1 member: Representative Orcutt, Ranking Minority Member.

**Staff:** Jennifer Harris (786-7143).

### **Background:**

#### Destruction of Driving Records.

The Department of Licensing (DOL) cannot destroy a person's driving record that includes convictions for Driving Under the Influence (DUI), Physical Control, Vehicular Homicide and Vehicular Assault DUI 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 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.

#### 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 the person 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.

#### License Suspensions and Ignition Interlock Devices.

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.

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.

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.

#### The 24/7 Sobriety Program.

If a person is convicted of DUI and the person has no prior DUI convictions, the person may be subject to electronic home monitoring in lieu of the mandatory minimum period incarceration. Generally, the 24/7 Sobriety Program (24/7 Program) is used for repetitive DUI offenders.

The 24/7 Program, piloted in 2014, 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 who violate the terms of the program are subject to sanctions from a written warning up to serving his or her entire remaining sentence.

Participants pay a user fee to participate in the 24/7 Program. The 24/7 Sobriety Account (Account) in the State Treasury defrays the costs of operating the 24/7 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.

#### **Summary of Engrossed Substitute Bill:**

##### 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.

Proof of a person's qualification to draw blood may be established through the Department of Health's online provider credential search.

### 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 two 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.

### License Suspensions and Ignition Interlock Devices.

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.

The ignition interlock restriction period must be tolled anytime a person does not have an IID installed on the vehicle that they operate during their restriction period. In addition, 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 previously verified as having been installed on a vehicle owned or operated by the person is still installed and functioning.

### The 24/7 Sobriety Program.

The 24/7 Program is made a permanent program. In lieu of a mandatory minimum term of incarceration for a DUI offense, if the person has no prior DUI offenses, a court may order the person to either participate in electronic home monitoring, the 24/7 Program, or both. If the 24/7 Program is imposed, then the person must participate in: (a) 90 days of 24/7 Program monitoring if the person's BAC is less than 0.15; or (b) 120 days of 24/7 Program monitoring if the person's BAC is at least 0.15. In addition, the court may consider the offender's participation in any pretrial 24/7 Program monitoring as fulfilling a portion of post-trial sentencing.

If a person, with no prior DUI offenses, successfully completes or is enrolled in a 24/7 Program, that person's license may not be suspended. Any participant who violates the terms of participation in a 24/7 Program or does not pay the required associated fees must serve a minimum of:

- one day in jail on his or her second violation (instead of two days of imprisonment or if post-trial, the entire remaining sentence);

- three days in jail on his or her third violation (instead of five days of imprisonment or if post-trial, the entire remaining sentence);
- five days in jail on his or her fourth violation (instead of 10 days of imprisonment or if post-trial, the entire remaining sentence); and
- seven days in jail on his or her fifth or subsequent violation (instead of serving the entire remaining sentence).

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.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 15, relating to reducing 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, which takes effect January 1, 2019.

**Staff Summary of Public Testimony (Public Safety):**

(In support) The Impaired Driving Work Group is a diverse group of stakeholders that has met for the last 10 years to improve impaired driving in Washington. Although there are still many deaths and injuries that occur due to impaired driving, more state troopers are needed to patrol our highways. There are two main provisions that stand out in this bill. First, there were people gaming the system by not having the IID installed for the entire time of their restriction. This bill will require the person to have the IID on the entire time of their restriction from the beginning. Secondly, when a person is pulled over for a DUI violation, the law enforcement officer has to give the person back their license because a person's license is a property right in this state. This allows them to drive for another 60 days until a DOL hearing takes place. Although this will take a couple of years to go into effect, this bill will help with that problem.

(Opposed) None.

(Other) The first issue is the amendment to the Prado case in the bill (which has been fixed in the substitute bill). There is a misconception after the Prado case that drivers are getting away with impaired driving because all the officer observed was some lane travel and erratic driving, and so cases are being dismissed. That is not the case. The court said that brief incursions across the white lane with no erratic driving or safety problems will happen in normal day-to-day driving. The issue is a training issue for law enforcement officers and prosecutors. No fix is needed and current Washington law is appropriate.

The second issue is in regards to the DOL timeframe for license suspensions. Speeding up the timeframe makes that window of time very brief for drivers to obtain the information that

they need to request a hearing. It is recommended that there be a requirement that the DOL fast track the notice to the driver so that they can request a hearing.

Lastly, there was an inadvertent drafting error in the original bill as it relates to the day for day credit given to a driver with an IID installed (which has been fixed in the substitute bill). The way the original bill was drafted is that a driver will be given day for day credit for the period of time the IID is installed after arrest and before their license is suspended. The offender can also get credit for the time they have an IID license but not after that. There is a window of time where they have suffered their suspension and reinstated their driver's license but the criminal charges are still pending. The driver will be incentivized to take the IID off, wait to see what happens with the criminal charges, and then place it back on. A technical amendment can fix this.

**Staff Summary of Public Testimony (Transportation):**

(In support) A number of elements of this bill are positive, including changes to the 24/7 Sobriety Program. Specific language changes are recommended to clean up a portion of a section that inadvertently eliminates the electronic home monitoring option as an alternative to minimum incarceration times. The recommended fix can be made on the floor.

(Opposed) None.

**Persons Testifying (Public Safety):** (In support) Representative Goodman, prime sponsor.

(Other) Patricia Fulton, Washington Association of Criminal Defense Lawyers and Washington Defender Association.

**Persons Testifying (Transportation):** James McMahan, Washington Association of Sheriffs and Police Chiefs; and Shelly Baldwin, Washington Traffic Safety Commission.

**Persons Signed In To Testify But Not Testifying (Public Safety):** None.

**Persons Signed In To Testify But Not Testifying (Transportation):** None.