

# SENATE BILL REPORT

## ESHB 2700

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As of February 22, 2016

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

**Committee Activity:** Law & Justice: 2/23/16.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Staff:** Aldo Melchiori (786-7439)

**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 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 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.

Washington v. Conover. Under the Sentencing Reform Act, the court must impose imprisonment in addition to the standard sentencing range if specific conditions for

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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 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. In addition to other sanctions for a person convicted of DUI, 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;
- 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;
- have policies and procedures to recruit, screen, train, and provide feedback and support to the panelists;
- charge a reasonable fee to persons required to attend, unless ordered otherwise by the court;
- have a policy to prohibit admittance of anyone under the influence or anyone whose actions or behavior are inappropriate;
- maintain attendance records for at least five years;
- make reasonable efforts to use a facility that meets standards established by the Americans with Disabilities Act;
- provide referral information to other community services; and

- 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. 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 for repeat offenders in which participants submit to the testing of their blood, breath, urine, or other bodily substances in order to determine the presence of alcohol, marijuana, or any controlled substance in their 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 is retained in the Account.

**Summary of 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. The court must destroy records, after 15 years from the date of conviction, if the offense was originally charged as DUI, physical control of a motor vehicle while under the influence, vehicular homicide, or vehicular assault and the court finds that the person was not intoxicated.

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 is 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 Sobriety Program is permanent and is no longer a pilot program.

It is clarified that when any person is charged with a violation of DUI, physical control while under the influence, vehicular homicide, or vehicular assault, in which the person has a prior offense, and the current offense involves alcohol, is released from custody at arraignment or trial on bail or personal recognizance, the court authorizing the release may order compliance with the 24/7 Sobriety Program as a condition of release. People with no prior offenses may participate in the 24/7 Sobriety Program, in lieu of the mandatory minimum term of imprisonment.

A participant who violates the terms of participation in the 24/7 Sobriety Program or does not pay the required fees or associated costs pretrial or post-trial must serve the following sanctions:

- first violation: receive written warning notice;
- second violation: minimum 1 day in jail;
- third violation: minimum 3 days in jail;
- fourth violation: minimum 5 days in jail; and
- fifth or subsequent violation: minimum 7 days in jail.

If a person has no prior offenses within seven years, that person may be partially relieved of a DOL license suspension, revocation, or denial if that person complies with the following criteria:

- If the person's blood-alcohol concentration was less than 0.15 or if there is no test - but not a refusal - the person must be evaluated by an alcoholism agency or probation department pursuant to RCW 46.20.311 and must show enrollment in or completion of a 90 day period of 24/7 sobriety program monitoring. In no circumstances will the license suspension be for fewer than two days.
- If the person's blood-alcohol concentration was at least 0.15, the person must be evaluated by an alcoholism agency or probation department pursuant to RCW 46.20.311 and must show enrollment in or completion of a 120 day period of 24/7 sobriety program monitoring. In no circumstances will the license suspension be for fewer than four days.

If a participant is removed from the 24/7 Sobriety Program, the court must send written notice to DOL within five business days. Upon receipt of a notice from the court that a participant has been removed from a 24/7 Sobriety Program, DOL must resume any suspension, revocation, or denial that had been terminated early due to participation in the 24/7 Program, granting credit on a day-for-day basis for any portion of a suspension, revocation, or denial already served, arising out of the same incident.

If the person had a blood-alcohol concentration of 0.08 or more, or a THC concentration of blood that was 5.00 or more, and this is the person's first incident within seven years, the person's license will not be suspended for 90 days so long as the person successfully completes or is enrolled in a pretrial 24/7 Sobriety Program.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which 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.