
Public Safety Committee

HB 1614

Brief Description: Concerning impaired driving.

Sponsors: Representatives Goodman, Klippert, Orwall, Hayes, Pellicciotti, Holy, Griffey, Pettigrew, Muri and Haler.

Brief Summary of Bill

- Imposes an express requirement that, in order to vacate a record of conviction for an impaired driving related "prior offense," 10 years must have elapsed since the arrest for the prior offense.
- Requires warrantless arrest and booking of persons suspected of impaired driving when the arresting officer knows that the person is charged with or awaiting arraignment on another offense related to impaired driving.
- Requires currently imposed monthly \$20 Ignition Interlock Device Revolving Account payments to be made directly to the Department of Licensing (DOL).
- Requires 180 consecutive violation-free days prior to release of an ignition interlock restriction, rather than four months.
- Provides a definition of the "safely off the roadway" defense to the crime of Actual Physical Control While Under the Influence.
- Makes changes to the laws regarding the admissibility of tests for blood and breath alcohol concentration in an impaired driving investigation.
- Requires the court to notify the DOL of any person who willfully fails to appear after having been "notified of" (rather than "served with") a traffic-related criminal complaint.

Hearing Date: 2/7/17

Staff: Omeara Harrington (786-7136).

Background:

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.

Vacating Conviction Records.

A person convicted of a misdemeanor or gross misdemeanor offense who has completed all of the terms of the sentence and has met other statutory criteria may apply to the sentencing court for a vacation of the record of conviction. Certain convictions cannot be vacated, including convictions for Driving Under the Influence (DUI) or Actual Physical Control While Under the Influence (PC).

A record of conviction for a gross misdemeanor that is a "prior offense" may not be vacated if the person has had a subsequent alcohol or drug violation within 10 years of the date of conviction of the prior offense. The term "prior offense" is defined and generally includes convictions for alcohol and drug-related driving offenses, such as negligent driving in the first degree, impaired operation of a vessel, reckless driving if the original charge was DUI, and any deferred prosecution for similar alcohol-related driving offenses.

Mandatory Arrest and Hold.

A law enforcement officer must arrest a person without a warrant, and keep him or her in custody pending release on bail, personal recognizance, or a court order, when the officer has probable cause to believe that the person has committed a DUI or PC offense and the officer has knowledge that the person has had at least one prior offense within the previous 10 years. The requirement does not apply if the person requires immediate medical attention and is admitted to a hospital.

Ignition Interlock Requirements.

The Department of Licensing (DOL) must require that a person only drive a vehicle equipped with a functioning ignition interlock device in certain circumstances, including:

- when required by court order as a condition of pretrial release;
- while the person has an ignition interlock driver's license;
- when a person is participating in a deferred prosecution for DUI, PC, or other specified offenses;
- during any applicable period of suspension, revocation, or denial of driving privileges due to a conviction for DUI, PC, or other specified offenses; and
- upon order of a court restricting a person who is charged or convicted with any offense involving the use, consumption, or possession of alcohol while operating a motor vehicle.

An ignition interlock user must pay the cost of installing, removing, and leasing the ignition interlock device, unless the ignition interlock company waives costs or the person is indigent. In addition, the applicant must pay a monthly \$20 fee for deposit into the Ignition Interlock Device Revolving Account. The applicant must pay the \$20 fee directly to the ignition interlock company, which, in turn, remits the fee to the DOL for deposit into the account.

The duration of the ignition interlock restriction depends on the circumstances under which the restriction was imposed. The DOL will not remove a restriction associated with a deferred prosecution or conviction until it receives a declaration from the ignition interlock vendor certifying that the four consecutive months leading up to the removal have been free of certain specified incidents including:

- any attempt to start the vehicle with a breath alcohol concentration (BAC) of 0.04 or more;

- failure to take any random test;
- failure to pass any random retest with a BAC of 0.025 or lower; or
- failure of the person to appear at the ignition interlock device vendor when required for maintenance, repair, calibration, monitoring, inspection, or replacement of the device.

Safely Off the Roadway Defense.

A person is guilty of a PC offense if the person has actual physical control of a vehicle: (1) while under the influence of or affected by intoxicating liquor or any drug, or the combined influence of intoxicating liquor and any drug; or (2) has either a BAC of 0.08 or higher or a THC concentration of 5.00 or higher within two hours of being in physical control.

No person may be convicted of a PC offense, and it is an affirmative defense to an action to suspend, revoke, or deny the privilege to drive if, prior to being pursued by a law enforcement officer, the person has moved the vehicle safely off the roadway.

Admissibility of Blood and Breath Tests.

Analysis of a person's blood or breath must be performed according to methods approved by the state toxicologist.

A breath test performed by any instrument approved by the state toxicologist is admissible at trial or in an administrative proceeding if there is prima facie evidence of certain factors, including, but not limited to, evidence that: the test was performed by a person authorized by the state toxicologist to perform the test; the person being tested did not vomit or have anything to eat, drink, or smoke for at least 15 minutes prior to administration of the test; and the person being tested did not have any foreign substances, not to include dental work, in his or her mouth.

When a blood test is administered for the purpose of determining its alcoholic or drug content, the blood withdrawal may only be performed by statutorily authorized professionals including physicians, nurses, physician assistants, and medical assistant-certified or medical-assistant phlebotomists, among others. Proof of a person's qualification to draw blood may be established through the Department of Health's online provider credential search.

The refusal of a person to submit to a test of the alcohol or drug concentration in the person's blood or breath is admissible into evidence at a subsequent trial.

License Suspension for Willful Failure to Appear.

Among other circumstances, the DOL must suspend a person's driver's license when the person willfully fails to appear at a requested hearing for a moving violation or fails to comply with the terms of the notice of a traffic-related criminal complaint for a moving violation. Whenever a person served with a traffic citation or a traffic-related criminal complaint willfully fails to appear or comply, the court must promptly provide notice to the DOL.

Summary of Bill:

Vacating Conviction Records.

The restrictions on vacating an impaired driving-related "prior offense" are amended to add an express requirement that 10 years has elapsed since the arrest for the prior offense. The current

law requirement remains that the applicant must also not have had an alcohol or drug violation within 10 years of the arrest for the vacated offense.

Mandatory Arrest and Hold.

Mandatory warrantless arrest and booking requirements are expanded to apply to persons suspected of impaired driving when the arresting officer knows that the person is charged with or awaiting arraignment on another offense related to impaired driving.

Ignition Interlock Requirements.

Ignition interlock device users must send the currently required monthly \$20 Ignition Interlock Device Revolving Account payments directly to the DOL (rather than sending the payments to the ignition interlock company, which remits to the DOL.)

A person must have 180 consecutive violation-free days prior to release of an ignition interlock restriction, rather than four months.

Safely Off the Roadway Defense.

The "safely off the roadway" defense to the crime of PC is defined. A vehicle is safely off the roadway if: (1) the driver is removed from the driver's seat; (2) the vehicle is parked in an area that is not a sidewalk, bike path, or driving lane; (3) the vehicle's engine is off; and (4) the vehicle's transmission is in park, or in gear if a motorcycle or manual vehicle.

In addition, rather than providing an affirmative defense to an administrative action to suspend, revoke, or deny driving privileges, no administrative action may be brought against a person who is safely off the roadway prior to law enforcement pursuit.

Admissibility of Blood and Breath Tests.

An exception is made for piercings in the requirement that, in order for a breath sample to be admissible, the person providing the sample must have nothing in his or her mouth.

In addition to other authorized professionals, any person certified as a physician's trained advanced emergency medical technician and paramedic may perform blood draws pursuant to an impaired driving investigation. For blood draws occurring outside of the state, "any qualified person" may perform a draw.

The statute regarding the admissibility of a person's refusal to submit to a blood or breath test is amended to indicate that a refusal to submit to a blood test is admissible if a search warrant, or an exception to the warrant requirement, authorized the seizure.

License Suspension for Willful Failure to Appear.

A court must notify the DOL of any person who willfully fails to appear after having been "notified of" (rather than "served with") a traffic-related criminal complaint.

Appropriation: None.

Fiscal Note: Requested on February 1, 2017.

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