
Public Safety Committee

HB 2715

Brief Description: Concerning impaired driving.

Sponsors: Representatives Klippert and Goodman.

Brief Summary of Bill

- Grants the court discretion to waive imposition of the mandatory minimum sentence for first-time impaired driving offenses, and reiterates that a showing of substantial risk to physical or mental wellbeing is required to suspend a mandatory minimum sentence for a second or third offense.
- Specifies that any portion of a felony impaired driving sentence that is attributed to certain impaired driving-related enhancements is not eligible for good time credits or earned release time.
- Specifies that minor-passenger enhancements in impaired driving cases apply for each minor passenger and must be served consecutively.
- Requires courts to notify the Department of Licensing any time an ignition interlock requirement is imposed as a condition of release or sentence.
- Removes the statutory minimum qualification requirements for forensic phlebotomists, leaving minimum qualifications within Department of Health rulemaking authority.
- Makes costs incurred through emergency response to an incident caused by an Actual Physical Control While Under the Influence of Intoxicating Liquor or any Drug offense eligible for emergency response reimbursement.

Hearing Date: 1/22/18

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.

Impaired Driving Offenses.

A person may be convicted of impaired driving under either the Driving Under the Influence (DUI) statute or the Actual Physical Control of a Vehicle While Under the Influence (PC) statute. A person is guilty of DUI if he or she drives while under the influence of intoxicating liquor, marijuana, or any drug, and is guilty of PC if he or she has actual physical control of a vehicle while under the influence of intoxicating liquor, marijuana, or any drug.

A DUI or PC offense is punishable as a gross misdemeanor if the person has two or fewer prior impaired driving offenses within seven years. However, a DUI or PC offense becomes a felony offense if the defendant has three or more prior impaired driving offenses within 10 years, or has previously been convicted of Vehicular Homicide or Vehicular Assault while under the influence of intoxicating liquor or any drug.

A person who drives a motor vehicle while under the influence of intoxicating liquor or any drug and causes the death of another person is guilty of Vehicular Homicide-DUI, a felony. A person who causes substantial bodily harm to another person through this conduct is guilty of Vehicular Assault-DUI, also a felony.

Penalties for Non-Felony DUI and PC Offenses.

The criminal penalties associated with a DUI or PC conviction vary according to how many prior offenses the defendant has and the defendant's blood alcohol concentration (BAC) at the time of testing.

If a defendant has no prior offenses in seven years, the court must impose a minimum term of either one or two days of imprisonment, depending on BAC arrest. In lieu of the mandatory minimum, the court may order a term of 15 or 30 days of electronic home monitoring (EHM) or a term of 90 or 120 days of 24/7 Sobriety Program monitoring.

A second or third offense in seven years carries both a mandatory minimum term of incarceration as well as a minimum term of EHM, which vary depending on the person's BAC at the time of arrest. For a second offense, the court may replace the standard sentence of 30 or 45 days of incarceration and 60 or 90 days of EHM with a minimum of either four or six days in jail and either 180 days of EHM or 120 days of 24/7 Sobriety Program monitoring. For a third offense, the court must impose a minimum term of 90 or 120 days of incarceration, but may replace the mandatory minimum of 120 or 150 days of EHM with additional eight or 10 days of incarceration.

Regardless of whether the sentence is for a first, second, or third offense, the mandatory minimum sentence cannot be suspended, and the alternative sentence imposed, unless the court makes a written finding that the mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being.

Impaired Driving Enhancements.

Felony Sentencing Enhancements. Sentences for most felony offenses are determined by reference to a sentencing grid. The sentencing grid provides a standard range of months for the sentence, based on both the severity, or "seriousness level," of the offense and the convicted person's "offender score," which is based on the offender's criminal history. Additional factors

may affect an offender's sentence, such as statutory sentencing enhancements, which add a specified amount of time to an offender's standard-range sentence in qualifying cases.

A two-year enhancement is added to the standard-range sentence for Vehicular Homicide-DUI for each prior impaired driving-related offense. A 12-month enhancement is added to the standard-range sentence for Vehicular Homicide-DUI; Vehicular Assault-DUI; felony DUI, or felony PC when there were one or more minor passengers under the age of 16 in the defendant's vehicle at the time of the offense. These enhancements are mandatory, must be served in total confinement, and run consecutively to all other sentencing provisions.

Enhanced Penalties for Non-Felony Sentences. A sentence for a non-felony DUI or PC offense includes enhanced penalties when there is a minor passenger under the age of 16 in the defendant's vehicle at the time of the offense. In these cases, the court must: order the use of an ignition interlock or other device for an additional six months; order additional imprisonment time; and order an additional fine.

The length of the additional imprisonment and the amount of the additional fine vary depending on the number of prior impaired driving-related offenses the defendant has. Additional imprisonment ranges from an additional 24 hours (no prior offenses) to an additional 10 days (two prior offenses). The additional fine ranges from between \$1,000 to \$5,000 (no prior offenses) to \$3,000 to \$10,000 (two prior offenses).

Earned Release Time.

An offender's felony sentence may be reduced by "earned release time," which is earned through good behavior and good performance, as determined by the correctional agency that has jurisdiction over the offender. An offender may accumulate earned release time while serving a sentence and during pre-sentence incarceration. The portion of the sentence that may be reduced by earned release time depends on various factors, including the underlying offense and the date of conviction. An offender may not receive any earned release time for the portion of the sentence that results from any firearm or deadly weapon enhancements.

Ignition Interlock Conditions.

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 specified impaired driving offenses;
- during any applicable period of suspension, revocation, or denial of driving privileges due to a conviction for specified impaired driving 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.

Depending on the circumstances, a court either may or must require a person charged with or convicted of an impaired driving offense to have a functioning ignition interlock device installed on any motor vehicle he or she operates. The court must immediately notify the DOL when an ignition interlock restriction is imposed as a condition of release or after conviction and the offense involves alcohol. Upon receiving notification from the court, the DOL must make a

notation on the driving record of the restricted person stating that the person may operate only a motor vehicle equipped with a functioning ignition interlock device. This notation is visible to law enforcement.

Forensic Phlebotomists.

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, medical assistant-certified or medical assistant phlebotomists, and advanced emergency medical technicians or paramedics, and forensic phlebotomists, among others. A forensic phlebotomist is a police officer, a law enforcement officer, or an employee of a correctional or detention facility, who is certified by the DOH to collect venous blood samples for forensic testing and meets any training and proficiency standards of his or her employer. A forensic phlebotomist may only perform a venous blood draw for an impaired driving investigation under specified conditions.

The DOH must establish rules specifying minimum qualifications for forensic phlebotomists. These qualifications must include training consistent with Occupational Safety and Health Administration (OSHA) guidelines, between 20 and 30 hours of work in a clinical setting, and at least 100 successful venipunctures. The DOH may not require more than 40 hours of classroom training.

Emergency Cost Recovery.

A person whose intoxication causes an incident resulting in an appropriate emergency response by a public agency, and who, in connection with the incident, has been found guilty of or received a deferred prosecution for a specified offense, is liable for the expense of the emergency response. In qualifying cases, the prosecution may present to the court information setting forth the expenses incurred by the responding public agency. If the court finds the expenses reasonable, it must order the defendant to reimburse the public agency for the cost of responding. The defendant's liability for the expense of an emergency response cannot exceed \$2,500 per incident.

The offenses eligible for emergency cost recovery are:

- DUI;
- operating an aircraft under the influence of intoxicants or drugs;
- use of a vessel while under the influence of alcohol or drugs;
- vehicular homicide while under the influence of intoxicating liquor or any drug; and
- vehicular assault while under the influence of intoxicating liquor or any drug.

Summary of Bill:

Alternative Penalties for Non-Felony DUI and PC Offenses.

With respect to a first impaired driving offense, it is within the court's discretion to suspend the mandatory minimum sentence and impose the alternative penalties. The court need not make a finding that the mandatory minimum sentence will impose a substantial risk to the offender's physical or mental wellbeing. For second and third offenses, it is reiterated that the mandatory minimum sentence may be suspended, and the alternative provisions imposed, only if the court makes a finding of substantial risk to physical or mental wellbeing.

Impaired Driving Sentencing Enhancements.

Felony impaired driving offense sentencing enhancements for minor passengers under the age of 16 are consecutive to other minor child enhancements (in addition to being consecutive to other sentencing provisions).

Minor passenger enhancements in non-felony DUI and PC sentences apply for each minor passenger under the age of 16. Additional imprisonment time must be served consecutively for each minor passenger.

Limits on Earned Release.

There are no good time credits or earned release time for any portion of a felony sentence that results from the following enhancements:

- the enhancement adding two years to a sentence for Vehicular Homicide-DUI for each prior impaired driving offense; and
- the enhancement adding 12 months to a sentence for Vehicular Homicide-DUI, Vehicular Assault-DUI, felony DUI, or felony PC, for each minor passenger under the age of 16.

Ignition Interlock Conditions.

The court must immediately notify the DOL whenever an ignition interlock restriction is imposed as a condition of release or after conviction for an impaired driving offense, rather than only when the offense involves alcohol.

Forensic Phlebotomists.

The statutory minimum qualifications for forensic phlebotomists are removed, including training consistent with OSHA guidelines, clinical hours, and number of successful venipunctures. Statutory direction to the DOH to establish rules specifying minimum qualifications for forensic phlebotomists is retained.

Emergency Cost Recovery.

Actual PC offenses are included in the list of offenses for which the defendant may be held liable for emergency cost recovery.

Appropriation: None.

Fiscal Note: Requested on January 19, 2018.

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