

SENATE BILL REPORT

E2SHB 1614

As Passed Senate - Amended, April 20, 2017

Title: An act relating to impaired driving.

Brief Description: Concerning impaired driving.

Sponsors: House Committee on Transportation (originally sponsored by Representatives Goodman, Klippert, Orwall, Hayes, Pellicciotti, Holy, Griffey, Pettigrew, Muri and Haler).

Brief History: Passed House: 3/02/17, 95-3.

Committee Activity: Law & Justice: 3/21/17, 3/29/17 [DPA-TRAN].

Transportation: 4/03/17, 4/03/17 [DPA, DNP].

Floor Activity:

Passed Senate - Amended: 4/20/17, 47-2.

Brief Summary of Bill (As Amended by Senate)

- Imposes an express requirement that, in order to vacate a record of conviction for an impaired driving-related prior offense, ten years must have elapsed since the arrest for the prior offense.
- Requires a law enforcement officer to make a warrantless arrest and hold a person suspected of impaired driving in custody when the arresting officer knows that the person is charged with or awaiting arraignment on another offense related to impaired driving.
- Creates a medical exemption to the requirement that an ignition interlock restriction is tolled during the time that a person does not have an ignition interlock device installed.
- Requires 180 consecutive, violation-free days prior to release of an ignition interlock restriction, rather than four months.
- Amends the exceptions to the standard penalties for a second impaired driving offense.
- Makes changes to the laws regarding the admissibility of tests for blood and breath alcohol concentration.
- Allows for physician's trained advanced medical technician and paramedic certified by Department of Health, forensic phlebotomist, or out-of-state

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jurisdiction to withdraw blood for purpose of determining its alcohol or drug content.

- Allows ignition interlock companies to retain \$0.25 of the \$20 monthly payments that are made by device users to the companies to offset the companies' administrative costs.
- Allows a city or county to accept local account fund transfers into its local 24/7 sobriety account.
- Increases the fee imposed on persons convicted of Driving Under the Influence, vehicular homicide, or vehicular assault.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass as amended and be referred to Committee on Transportation.

Signed by Senators Padden, Chair; O'Ban, Vice Chair; Pedersen, Ranking Minority Member; Angel, Darneille, Frockt and Wilson.

Staff: Melissa Van Gorkom (786-7491)

SENATE COMMITTEE ON TRANSPORTATION

Majority Report: Do pass as amended.

Signed by Senators King, Chair; Sheldon, Vice Chair; Hobbs, Ranking Minority Member; Liias, Assistant Ranking Minority Member; Cleveland, Fortunato, Hawkins, O'Ban, Saldaña, Takko, Walsh and Wilson.

Minority Report: Do not pass.

Signed by Senator Van De Wege.

Staff: Kellee Keegan (786-7429)

Background: 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 considered a prior offense under the impaired driving laws may not be vacated if the person has had a subsequent alcohol or drug violation within ten 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 the person 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 knows that the person has had at least one prior offense within the previous ten years. The requirement does not apply if the person requires immediate medical attention and is admitted to a hospital.

Criminal and Administrative Penalties for Impaired Driving Convictions. The criminal penalties associated with a DUI or PC conviction vary according to how many prior offenses a person 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 imprisonment, a portion of which cannot be suspended unless the court makes written findings that the mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. In lieu of the mandatory minimum, the court may order a term of electronic home monitoring (EHM) or 24/7 Sobriety Program monitoring. The 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 who violate the terms of the program are subject to sanctions.

A second or subsequent offense in seven years carries both a mandatory minimum term of incarceration as well as a minimum term of EHM. The court must impose the minimum term of incarceration, but may order additional jail time or a term of 24/7 Sobriety Program monitoring in place of the mandatory EHM. If a person has two or three prior offenses, the mandatory minimum EHM may only be replaced by additional jail time.

A person found guilty of DUI or PC is subject to additional sanctions, including a mandatory term of driver's license suspension or revocation. The period of suspension or revocation ranges between 90 days and four years, depending on the person's BAC at the time of testing and the number of prior offenses. For first time offenders, a portion of the term of driver's license suspension may be avoided through participation in 24/7 Sobriety Program monitoring.

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 the following:

- 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 the following:

- any attempt to start the vehicle with a 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.

The period of restriction associated with a deferred prosecution or conviction must be tolled during the period of time that the restricted person does not have an ignition interlock device installed on a vehicle owned or operated by the person.

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 their mouth.

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.

Collection of Blood. The collection of forensic blood samples to determine a driver's alcohol content was originally authorized by the Legislature in 1969. The statute allowed for qualified technicians to collect samples in addition to medical professionals until 2015. Since 2015, 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.

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. 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.

24/7 Program Account (Account). The 24/7 Account in the State Treasury, which is administered by the Criminal Justice Training Commission, defrays the costs of operating the 24/7 Sobriety program (Program). The account may receive funds from a variety of sources including donations, gifts, activation and user fees. Participants' payment of fees are

collected contemporaneously or in advance to fund the Program and may not be waived or reduced. However, cities and counties may subsidize or pay any applicable fees related to the Program. The Account can be used for operational and administration expenses related to the Program.

Fees Imposed on Offenders. In addition to other monetary penalties, a fee of \$200 is imposed on persons convicted, sentenced to a lesser charge, or given a deferred prosecution, as a result of an arrest for DUI, vehicular homicide, or vehicular assault. The stated purpose of the fee is to fund the state toxicology laboratory and the Washington State Patrol for grants and activities to increase the conviction rate and decrease the number of DUIs. Of the fee, \$25 must be deposited into the Highway Safety Account to be used solely for funding WTSC grants to reduce statewide collisions caused by DUI. Grants awarded may be for projects that encourage collaboration with other community, governmental, and private organizations, and that use innovative approaches based on best practices or proven strategies. Grant recipients may include DUI courts and jurisdictions implementing victim impact panel registries.

Summary of Amended Bill: Vacating Conviction Records. The restrictions on vacating an impaired driving-related prior offense are amended to add an express requirement that ten 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 ten years of the arrest for the vacated offense.

Mandatory Arrest and Hold. In addition to persons who have been convicted of a prior offense, persons suspected of impaired driving must be arrested without a warrant and held in custody pending release on bail, personal recognizance, or court order when the arresting officer knows that the person is charged with or awaiting arraignment on another offense related to impaired driving.

Criminal and Administrative Penalties for Impaired Driving Convictions. For a second impaired driving offense, the court may replace the entire standard sentence of incarceration and EHM with four days in jail for a BAC lower than 0.15 or six days in jail for a BAC 0.15 or higher and either 180 days EHM or 120 days 24/7 Sobriety program monitoring. Additionally, second-time offenders with a lower BAC may avoid up to one year of the mandatory two-year driver's license suspension if evaluated by an alcoholism agency or probation department and six months in 24/7 Sobriety Program monitoring.

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

A person may receive a medical exemption to the mandatory tolling of the ignition interlock restriction that applies during the period of time that there is no ignition interlock device installed on a restricted person's vehicle. In order to be granted an exemption, a person must obtain a determination from the DOL indicating that the person is unable to operate the ignition interlock due to a physical disability. The DOL may charge a person seeking an exemption a reasonable fee for the assessment.

Ignition interlock companies may retain \$0.25 of the monthly \$20 payments that are made by device users in order to offset the companies' administrative costs associated with collection of the payments.

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 their mouth.

A refusal to submit to a blood test is admissible if a search warrant, or an exception to the warrant requirement, authorized the seizure.

Collection of Blood. A forensic phlebotomist or any person qualified by DOH or out-of-state jurisdiction whose scope of practice includes performing venous blood draws is authorized to withdraw blood for the purpose of determining its alcohol or drug content.

A forensic phlebotomist is defined as a police officer, law enforcement officer, or corrections employee who is certified by Department of Health and meets the training and proficiency standards of their employer to collect a venous blood sample for forensic testing pursuant to a search warrant, a waiver of the warrant requirement, or exigent circumstances.

The Department of Health must establish the training and proficiency standards for forensic phlebotomists. The training may not exceed 40 hours of classroom work and must include between 20-30 hours in a clinical setting with the completion of more than 100 successful venipunctures.

Any venous blood sample performed by a forensic phlebotomist is required to be done under certain conditions:

- if taken at the scene, it must be to be done in a licensed ambulance or aid service vehicle;
- the collection of blood samples must not interfere with the provision of essential medical care;
- the blood sample must be collected using sterile equipment and the skin area of puncture must be thoroughly cleansed and disinfected; and
- the person whose blood is collected shall either be seated, reclined or lying down when the blood is collected.

It is not professional misconduct for a person qualified by DOH to collect a blood sample without a person's consent when directed by a law enforcement officer to do so for the purpose of a blood test under the provisions of a search warrant or exigent circumstances. The identified professionals are not subject to civil or criminal liability for withdrawing blood from any person when directed by a law enforcement officer to do so for the purpose of a blood test under the provisions of a search warrant, a waiver of the search warrant requirement, or exigent circumstances. This does not relieve these professionals from discipline or liability arising from the use of improper procedures or from failing to exercise the required standard of care.

License Suspension for Willful Failure to Appear or Comply. A court must notify the DOL of a person who is notified of, in addition to a person who is served with, a traffic infraction or a

traffic-related criminal complaint, when the person willfully fails to appear or comply as required by the infraction or complaint.

24/7 Sobriety Account. A city or county may accept local account fund transfers into its local 24/7 Sobriety account to defray the costs of the 24/7 Sobriety program.

Fees Imposed on Offenders. The \$200 fee imposed on offenders is increased to \$250. Of the total amount, \$200 must be distributed in the same manner as the current fee is distributed, except that the list of grant recipients is expanded to include pilot programs in King and Spokane counties that are designed for persons with two or more prior offenses in years and include evidence-based assessment and treatment, if state funding is provided. Of the fee, \$50 must be distributed to the highway safety account for grants to organizations within counties to combat DUI of alcohol or drugs. A minimum of \$300,000 of these grant funds must support pilot programs in King and Spokane counties that are designed for persons with two or more prior offenses in seven years.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Engrossed Second Substitute House Bill (Law & Justice): *The committee recommended a different version of the bill than what was heard.*
PRO: These seem to be minor changes, but they are important in tightening up a number of DUI laws related to blood draws, detention, ignition interlock requirements, and many others. This bill is the product of an informal workgroup that examined a range of issues concerning impaired driving and has been well vetted.

OTHER: As of last June, if a driver cannot use an ignition interlock, the period of restriction is tolled. There are people with medical disabilities that cannot operate an interlock device, which results in an inability to get their license back. The medical exception from the tolling provision will allow for a driver who cannot use an ignition interlock to have the ability to wait out the restricted period and get their license back.

Not sure what impact the removing \$1 for interlock providers will have on the revolving account but the revolving account needs to be fully funded to allow for indigent drivers to have access to interlocks to satisfy their requirements.

There have been budget shortfalls in counties which have limited work release and there stands to be a number of people who may lose their jobs if they are in jail. We want people to continue to be productive members of the community while having a deterring effect of the punishment. Giving the judge discretion to allow for home detention will accomplish that goal.

Persons Testifying (Law & Justice): PRO: Representative Roger Goodman, Prime Sponsor.

OTHER: Jason Lantz, Washington Association of Criminal Defense Lawyers and Washington Defender Association.

Persons Signed In To Testify But Not Testifying (Law & Justice): No one.

Staff Summary of Public Testimony on Bill as Amended by Law & Justice (Transportation): *The committee recommended a different version of the bill than what was heard.* None.

Persons Testifying (Transportation): No one.

Persons Signed In To Testify But Not Testifying (Transportation): No one.