

# SENATE BILL REPORT

## SB 6189

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As of February 23, 2018

**Title:** An act relating to driving a motor vehicle with a suspended or revoked driver's license.

**Brief Description:** Changing driving a motor vehicle with a suspended or revoked driver's license provisions.

**Sponsors:** Senators Fain, Frockt, Pedersen, Palumbo, Hasegawa, Darneille, Rivers, Mullet and Saldaña.

**Brief History:**

**Committee Activity:** Law & Justice: 1/29/18, 2/01/18 [DPS, DNP, w/oRec].

Transportation: 2/05/18, 2/21/18 [DP2S-WM].

Ways & Means: 2/24/18.

**Brief Summary of Second Substitute Bill**

- Eliminates the failure to respond or appear in connection with a traffic infraction as a reason for suspension of a person's driver's license.
- Creates the Driving While License Suspended or Revoked 4 (DWLS 4), a traffic infraction resulting from a nonresident suspension, suspension of an intermediate driver's license, or suspension for any of the reasons listed in DWLS 2 or 3 when the person has resolved the underlying issue but not reinstated his or her license.
- Elevates DWLS 4 to DWLS 3 on the fifth violation of DWLS 4.
- Directs the Department of Licensing (DOL) to create a workgroup to develop low-cost, efficient options to administratively lift the driver's license suspension for persons whose license has been suspended for a failure to appear or respond to a moving violation infraction and report back to the Legislature by December 1, 2018.

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**SENATE COMMITTEE ON LAW & JUSTICE**

**Majority Report:** That Substitute Senate Bill No. 6189 be substituted therefor, and the substitute bill do pass.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Darneille and Frockt.

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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.*

**Minority Report:** Do not pass.

Signed by Senators Angel, Assistant Ranking Member; Wilson.

**Minority Report:** That it be referred without recommendation.

Signed by Senator Padden, Ranking Member.

**Staff:** Shani Bauer (786-7468)

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## SENATE COMMITTEE ON TRANSPORTATION

**Majority Report:** That Second Substitute Senate Bill No. 6189 be substituted therefor, and the second substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Hobbs, Chair; Saldaña, Vice Chair; King, Ranking Member; Chase, Cleveland, Dhingra, Fortunato, Liiias, McCoy, O'Ban, Takko, Wellman and Zeiger.

**Staff:** Kim Johnson (786-7472)

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## SENATE COMMITTEE ON WAYS & MEANS

**Staff:** Claire Goodwin (786-7736)

**Background:** It is a crime for a person to drive a motor vehicle in this state while that person's privilege to drive is suspended or revoked. There are three degrees of the crime of DWLS, which are dependent on the reason the person's license was suspended or revoked.

First degree DWLS is a gross misdemeanor offense and involves driving when an order of license revocation is in effect for being a habitual traffic offender.

Second degree DWLS, also a gross misdemeanor offense, generally involves driving when the person's license is suspended or revoked based on a conviction of any of a number of relatively serious traffic offenses or based on administrative action taken by DOL.

DWLS 3 is a misdemeanor offense and generally involves driving after a license is suspended or revoked for secondary reasons where there is no set suspension period. More specifically, those reasons include:

- the person failed to furnish proof of satisfactory progress in a required alcoholism or drug treatment program;
- the person failed to furnish proof of financial responsibility for the future;
- the person failed to comply with the provisions relating to uninsured accidents;
- the person failed to respond to a notice of traffic infraction for a moving violation, failed to appear at a requested hearing, violated a written promise to appear in court, or failed to comply with the terms of a notice of traffic infraction or citation;
- the person committed an offense in another state that, if committed in this state, would not be grounds for the suspension or revocation of the person's driver's license,
- the person has been suspended or revoked by reason of one or more of the items listed in the DWLS in the second degree offense, but was eligible to reinstate the person's driver's license or driving privilege at the time of the violation;

- the person has received traffic citations or notices of traffic infraction relating to intermediate driver's licenses that resulted in a suspension; or
- the person is not in compliance with a child support order.

At various times, the Legislature has attempted to establish avenues to avoid suspension or facilitate return of a person's license when the license is revoked for secondary reasons. In 2009, the Legislature adopted a relicensing diversion program for persons who commit DWLS 3 and whose license was suspended or revoked for failing to respond, appear, or comply with a notice of traffic infraction. In 2011, the Legislature authorized the prosecutor to direct DWLS 3 cases resulting from a traffic infraction to the prosecutor's office for consideration of filing an information or entry into a pre-charge diversion program rather than filing charges.

In order for a person to reinstate a driver's license after it has been suspended or revoked, the person must clear the underlying reason for the suspension—usually the payment of money, show proof of financial responsibility, and pay a reinstatement fee of \$75 for non-alcohol related suspensions, or \$150 for alcohol related suspensions.

**Summary of Bill (Second Substitute):** A person's driver's license may not be suspended for the failure to respond to a notice of traffic infraction for a moving violation, failure to appear at a requested hearing, violation of a written promise to appear in court, or failure to comply with the terms of a notice of traffic infraction or citation. Suspension of a person's driver's license may result if the reason for the underlying suspension was the failure to comply with the terms of a notice of a criminal complaint.

The crime of DWLS 4 is created as a traffic infraction, subject to a penalty of \$250. If the person appears in person before the court or submits by mail written proof that they have reinstated their license after being cited, the court shall reduce the penalty to \$50. A person is subject to DWLS 4 if the person drives while their license is revoked for one of the following reasons:

- the person committed an offense in another state that, if committed in this state, would not be grounds for the suspension or revocation of the person's driver's license;
- the person's license has been suspended or revoked by reason of one or more of the items listed in DWLS 2, DWLS 3, or for a failure to appear at a requested hearing for a noncriminal moving violation or a failure to respond to a notice of a traffic infraction, but was eligible to reinstate the driver's license or driving privilege at the time of the violation; or
- the person has received traffic citations or notices of a traffic infraction relating to an intermediate driver's license that resulted in a suspension.

A person is guilty of DWLS 3 on the fifth violation of DWLS 4.

The relicensing diversion program is renamed the relicensing program. A person who is subject to DWLS 3 or DWLS 4 may participate in the relicensing program at the discretion of the prosecuting attorney before charges are filed or at the discretion of the court after charges are filed.

DOL must create a work group to develop low-cost, efficient options to administratively lift the driver's license suspension for persons whose license has been suspended for a failure to appear or respond to a moving violation infraction. The workgroup must report back to the Legislature by December 1, 2018, with any recommended options.

A new account, called the driver's licensing technology support account, is created within the Highway Safety Fund. The appropriated account must be used only to support information technology systems used by DOL to communicate with the judicial information system, manage driving records, and implement court orders.

Of the \$20 legislative assessment on traffic infractions, \$4 is reallocated to the new driver's licensing technology support account. A new \$2 assessment is added for traffic infractions to support information technology systems used by DOL to communicate with the judicial information system, and is deposited into the new driver's licensing technology support account.

A new \$1 fee is assessed on all original and renewal applications for a driver's license or identicard and must be deposited in the highway safety fund.

**EFFECT OF CHANGES MADE BY TRANSPORTATION COMMITTEE (Second Substitute):**

- Creates a new account called the driver's licensing technology support account within the Highway Safety Fund. The appropriated account must be used only to support information technology systems used by DOL to communicate with the judicial information system, manage driving records and implement court orders.
- Reallocates \$4 of the \$20 legislative assessment on traffic infractions to the new driver's licensing technology support account.
- Creates a new \$2 assessment on traffic infractions, that is in addition to the Judicial Information System Assessment and deposits the monies into the new driver's licensing technology support account.
- Creates a new \$1 fee on all applications for an original or renewal of a driver's license or identicard and deposits the fee in the highway safety fund.
- Removes the requirement that DOL notify any person whose license was suspended for failure to respond or appear in connection with a traffic infraction that the person's license may be reinstated after payment of a reissue fee.
- Directs DOL to create a workgroup to develop low-cost, efficient options to administratively lift the driver's license suspension for persons whose license has been suspended for a failure to appear or respond to a moving violation infraction. The workgroup must report back to the Legislature by December 1, 2018, with any recommended options.
- Delays the effective date to July 1, 2019, for most of the operative sections of the bill.

**EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (First Substitute):**

1. Eliminates the failure to respond or appear in connection with a traffic infraction as a reason for suspension of a person's driver's license.

2. Creates DWLS 4, a traffic infraction, resulting from the following underlying reasons for suspension:
  - a. a nonresident suspension;
  - b. a suspension for any of the reasons listed in DWLS 2 or DWLS 3 for which the person has resolved the reason for suspension but has not reinstated his or her license; or
  - c. suspension of an intermediate drivers' license.
3. Retains in DWLS 3, suspension resulting from the following underlying reasons:
  - a. failure to furnish proof of satisfactory progress in a required alcoholism or drug treatment program;
  - b. failure to furnish proof of financial responsibility for the future;
  - c. failure to comply with the provisions relating to uninsured accidents.
  - d. failure to comply with the terms of a notice of a criminal complaint; or
  - e. failure to comply with a child support order.
4. Elevates DWLS 4 to DWLS 3 on the fifth violation of DWLS 4.
5. Requires DOL to notify any person whose license was suspended for failure to respond or appear in connection with a traffic infraction that the person's license may be reinstated.
6. Requires the reinstatement be subject to payment of a reissue fee.

**Appropriation:** None.

**Fiscal Note:** Requested on February 21, 2018.

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

**Effective Date:** The bill contains several effective dates. Please refer to the bill.

**Staff Summary of Public Testimony on Original Bill (Law & Justice):** *The committee recommended a different version of the bill than what was heard.* PRO: There are reasons you should be put in jail and there are reasons you should have penalties other than jail. Many DWLS 3 offenders are first time offenders and not in a financial position to make payments to court. Costs snowball to the point where they find themselves in jail. The cycle of jail and fines begins a downward slide into poverty making it difficult for a person to get a job or get housing. Driving while poor should not be a crime. Removing this crime will result in considerable cost savings for local government. It is smart on crime by allowing local agencies to focus more on greater public safety issues. It also addresses social, economic, and racial disproportionality issues.

License suspension does not reduce the incidence of law violations. We should move away from suspending people's licenses for financial reasons. License suspension should only be done as a traffic safety issue. There is no safety difference between someone who runs a red light and pays a ticket and someone who runs a red light and does not pay a ticket. There are other ways to incentivize payment. Many states have decriminalized DWLS 3, including Indiana, Maine, New Jersey, Wisconsin, Oregon. Getting rid of the criminal penalty will free up time and resources for other criminal justice matters.

Defendants in these cases are not flaunting the court system. Judges and collections agencies are not always responsive to requests for payment plans. DWLS 3 is the most common crime charged in Washington State today. Nights in jail cost people jobs and housing. impaired driving and distracted driving are the most hazardous conditions on roadway. Police should concentrate efforts there.

CON: Removing the criminal penalty will create a disincentive for people to pay their fines and will result in a large loss of revenue for the court and the state. This is one of the few incentives to get people to provide insurance. Washington is currently one of the highest states in the nation for uninsured drivers. There are other options like attaching lower jail time or vacating a person's record once the charges are paid in full. License suspension as a consequence of a traffic infraction is 100 percent avoidable by showing personal responsibility. A person's license may only be suspended for a nonmoving violation. Moving violations directly involve public safety. The statute mandates opportunities to allow people to pay over time. As a judge, it is easy to see patterns as to how people pay just enough to avoid criminal penalties. Remove the criminal penalties and you will remove the incentive for payment. It is rarely the first time offender who is in court on a DWLS 3.

OTHER: There are eight different ways to commit DWLS 3. The majority of the conversation is focused on the failure to address traffic infractions. A solution should focus solely on that reason. The majority of prosecutors believe if you are not trying to criminalize the underlying act, you should not trigger the due process encumbrances of the criminal justice system. If you are diverting all of the cases, it should not be criminal activity to begin with.

This is an appropriate mechanism in order to incentivize people to be insured. As an alternative, the Legislature could institute progressive penalties, starting as an infraction and proceeding to a misdemeanor. Failure to provide proof of insurance as an underlying reason should stay a misdemeanor.

**Persons Testifying (Law & Justice):** PRO: Senator Joe Fain, Prime Sponsor; Virla Spencer, Center for Justice; Paul Benz, Faith Action Network; Elysa Hovard, Cocoon House; Elisabeth Smith, ACLU of Washington; Kallie Ferguson, Washington Defenders Association; Juliana Roe, Washington State Association of Counties; Brittney Miller, citizen.

CON: Kelsi Hamilton, Washington Collectors Association; R.W. Buzzard, Lewis County District Court Judge.

OTHER: Tom McBride, Washington Association of Pros Attorneys; Corey Guilmette, Attorney, Public Defender Association; John Schochet, City of Seattle; Caitlin Lang, State Board of Health; Doug Levy, City of Kent; James McMahan, Washington Association of Sheriffs & Police Chiefs; Arthur West, citizen.

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

**Staff Summary of Public Testimony on First Substitute (Transportation):** *The committee recommended a different version of the bill than what was heard.* PRO: The cycle of jail and fines begins a downward slide into poverty making it difficult for a person to get a job or get

housing. Driving while poor should not be a crime. Removing this crime will result in considerable cost savings for local government. It is smart on crime by allowing local agencies to focus more on greater public safety issues. It also addresses social, economic, and racial disproportionality issues. Defendants in these cases are not flaunting the court system. Judges and collections agencies are not always responsive to requests for payment plans. DWLS 3 is the most common crime charged in Washington State today.

CON: License suspension as a consequence of a traffic infraction is 100 percent avoidable by showing personal responsibility. Removing the criminal penalty will create a disincentive for people to pay their fines and will result in a large loss of revenue for the court and the state. This is a critical piece of the enforcement process that you are removing.

OTHER: There may be significant impacts to the Department of Licensing with the effective dates that are provided in the bill. Specifically the retroactive reinstatement may be impossible to meet given the number of records that may need to be reviewed.

**Persons Testifying (Transportation):** PRO: Senator Joe Fain, Prime Sponsor; Elisabeth Smith, ACLU of Washington; John Schochet, City of Seattle.

CON: Kelsi Hamilton, Washington Collectors Association.

OTHER: David Bremer, Department of Licensing.

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

**Staff Summary of Public Testimony on Second Substitute (Ways & Means):** PRO: This bill creates a good policy framework. This measure addresses a real problem for low income people whose driver's license was suspended because they could not pay their traffic ticket. This is the most common crime charged in Washington. This bill will over time save billions of dollars. This will have a big impact by allowing people to keep their license while they pay off their tickets. As a result of extensive stakeholder work, this bill is only prospective and creates a workgroup to address people with suspended licenses.

CON: This will result in people not paying their tickets. This is a mistake because it creates a class of drivers that have no consequences. This would make Washington the only state that does not treat driving on a suspended license as a crime. The habitual traffic offender takes 20 tickets in five years to qualify for suspension, which is too low a threshold.

**Persons Testifying (Ways & Means):** PRO: Elisabeth Smith, ACLU of Washington; Alex Hur, Statewide Poverty Action Network; Rebecca Johnson, Seattle City Attorney's Office.

CON: Kelsi Hamilton, Washington Collectors Association; Chester Baldwin, Washington Collectors Association.

**Persons Signed In To Testify But Not Testifying (Ways & Means):** No one.