

# FINAL BILL REPORT

## 3SHB 1504

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Synopsis as Enacted

**Brief Description:** Concerning impaired driving.

**Sponsors:** House Committee on Transportation (originally sponsored by Representatives Klippert and Goodman).

**House Committee on Public Safety**  
**House Committee on Transportation**  
**Senate Committee on Law & Justice**  
**Senate Committee on Ways & Means**  
**Senate Committee on Transportation**

### **Background:**

#### Impaired Driving Offenses.

A person may be convicted of impaired driving if he or she commits either a Driving Under the Influence (DUI) offense or an Actual Physical Control of a Vehicle While Under the Influence (PC) offense. 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 classified as a gross misdemeanor if the person has two or fewer prior impaired driving offenses within the previous seven years. However, a DUI or PC offense becomes a felony offense if the person has three or more prior impaired driving offenses within the previous 10 years, or has previously been convicted of felony impaired driving or 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 as a result of driving under the influence is guilty of Vehicular Assault-DUI, also a felony.

#### Penalties for Nonfelony DUI and PC Offenses.

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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.*

The criminal penalties associated with a DUI or PC conviction vary according to how many prior impaired driving offenses the person has and the person's blood alcohol concentration (BAC) at the time of testing. If a person has no prior offenses in the previous seven years, the court must impose a minimum term of either one or two days of imprisonment, depending on the person's BAC. 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 within seven years carries both a mandatory minimum term of incarceration as well as a mandatory minimum term of EHM, which vary depending on the person's BAC. 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 at least an additional eight or 10 days of incarceration.

Regardless of whether the sentence is for a first, second, or third offense, the mandatory minimum sentence may not 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 person's physical or mental well-being.

#### Additional Penalties for Minor Passengers.

*Enhanced Penalties for Nonfelony Offenses.* A sentence for a nonfelony DUI or PC offense includes enhanced penalties when there is a minor passenger under the age of 16 in the vehicle at the time of the offense. In these cases, the court must order additional imprisonment time and an additional fine, which vary depending on the number of prior impaired driving-related offenses the person has. Additional imprisonment ranges from 24 hours (no prior offenses) to 10 days (two prior offenses). The additional fine ranges from \$1,000 to \$5,000 (no prior offenses) to \$3,000 to \$10,000 (two prior offenses).

*Felony Sentencing Enhancements.* Sentences for most felony offenses are determined by reference to a sentencing grid. Additional factors may affect a person's sentence, such as statutory sentencing enhancements, which add a specified amount of time to a person'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 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. If the addition of the minor passenger enhancement would result in a sentence that exceeds the statutory maximum sentence for the offense, the enhancement portion of the sentence cannot be reduced.

A person may not receive any earned release time for the portion of the sentence that results from certain enhancements. This restriction on earned release time does not apply to impaired driving-related enhancements.

*Additional Ignition Interlock Time.* Whenever a person is convicted of DUI or PC while a minor passenger under the age of 16 is in the vehicle, the court must order the use of an ignition interlock or other device for an additional six months.

#### Driver's License Suspension.

By driving a vehicle in Washington, a person has given implied consent to a test of his or her breath for alcohol content in the event of his or her arrest for impaired driving. If the person refuses to take the test, or if the person's BAC is 0.08 or higher or THC concentration is 5.00 or higher, the Department of Licensing (DOL) must revoke the person's privilege to drive for a period of at least 90 days to at least two years, depending on the circumstances. When the DOL proposes to withhold a person's driving privilege, the DOL must provide the person with at least 45 days' written notice specifying the day upon which the driving privilege will be withheld.

Upon conviction of a DUI or PC offense, the DOL must suspend or deny the privilege to drive for a period of time of between 90 days and four years, depending on the person's BAC at the time of the offense and the number of prior offenses. The DOL must give credit on a day-for-day basis toward a period of suspension following conviction for any days of suspension already served on an administrative suspension following arrest, and vice versa. After the period of suspension, the person must meet certain criteria and pay a license reissue fee to reinstate the license.

When the DOL receives notice of a deferred prosecution or conviction for an impaired driving offense, the DOL must order the person to surrender his or her driver's license. The license is placed in a probationary status for a period of five years. Upon reinstatement of the driving privilege after a period of suspension, the person must obtain a probationary license in order to operate a motor vehicle. A \$50 fee is imposed for each original issue or renewal of a probationary license. The fee for reissuance of a driver's license following the probationary period is \$150. Sixty-three percent of the fee is deposited in the Impaired Driving Safety Account, with the remainder deposited in the Highway Safety Fund.

#### Ignition Interlock Requirements.

The 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;
- after 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.

The installation of an ignition interlock device is not necessary on vehicles owned, leased, or rented by a person's employer and driven at the direction of a person's employer as a requirement of employment during working hours. The person must provide the DOL with a declaration from his or her employer establishing that the exemption criteria are met. The employer exemption does not apply when the employer's vehicle is assigned exclusively to the restricted person and used solely for commuting to and from employment.

In impaired driving cases, 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 only operate a motor vehicle equipped with a functioning ignition interlock device. This notation is visible to law enforcement.

If the ignition interlock restriction follows a conviction for an impaired driving offense, the period of restriction lasts one year, five years, or 10 years, depending on the number of prior offenses, and begins after any period of driver's license suspension. 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 180 days leading up to the removal have been free of certain specified incidents including:

- 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 Washington State Patrol is required to provide standards in rule for the certification, installation, repair, maintenance, monitoring, inspection, and removal of ignition interlock devices. An ignition interlock device must generally be calibrated to prevent the motor vehicle from being started when the breath sample provided has an alcohol concentration of 0.025 or more.

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 user must pay a monthly \$20 fee for deposit into the Ignition Interlock Device Revolving Account.

A person who is restricted to the use of a vehicle equipped with an ignition interlock device is guilty of a gross misdemeanor if he or she takes certain actions to circumvent the ignition interlock device, including, but not limited to, tampering with the device by modifying, detaching, disconnecting, or otherwise disabling it to allow the restricted driver to operate the vehicle. It is also a gross misdemeanor for a restricted person to drive a vehicle that is not equipped with a functioning ignition interlock device.

### 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 person to reimburse the public agency for the cost of responding. The person's liability for the expense of an emergency response may not 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-DUI; and
- Vehicular Assault-DUI.

### **Summary:**

A series of changes are made to provisions related to impaired driving.

### Penalties for Nonfelony Driving Under the Influence (DUI) and Actual Physical Control of a Vehicle While Under the Influence (PC) Offenses.

With respect to a first impaired driving offense, it is within the court's discretion to suspend or convert 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 person's physical or mental well-being. For second and third offenses, it is reiterated that the mandatory minimum sentence may be suspended or converted, and the alternative provisions imposed, only if the court makes a finding of substantial risk to the person's physical or mental well-being. The alternative penalties are modified to: (1) remove jail time; and (2) provide that, for a second offense, the alternative penalty is either a minimum of 180 days of electronic home monitoring (EHM) or 120 days of 24/7 Sobriety Program monitoring; and, for a third offense, the alternative penalty is 360 days of either EHM or 24/7 Sobriety Program monitoring.

References are changed from "alcoholism" and "alcohol or drug dependency" to "substance use disorder" in the provisions relating to criminal penalties and drivers licensing consequences for impaired driving offenses.

### Additional Penalties in Impaired Driving Cases.

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

Felony impaired driving offense sentencing enhancements for minor passengers under the age of 16 years are consecutive to other minor child enhancements (in addition to being consecutive to other sentencing provisions). If the addition of the enhancement results in a sentence that exceeds the statutory maximum for the offense, the enhancement is mandatory, must be served in total confinement, and must run consecutively to other sentencing provisions. There is no good time credit or earned release time for any portion of a felony sentence that results from the impaired driving enhancements for prior impaired driving offenses or minor passengers.

An additional 12 months, rather than an additional six months, of ignition interlock time must be imposed for each minor in the vehicle at the time a DUI or PC offense is committed. In felony DUI and PC cases, and in nonfelony cases in which the penalties for having a high BAC at the time of the offense are imposed, an additional 18 months of ignition interlock time must be imposed for each minor in the vehicle.

#### Driver's License Suspension and Reissuance.

Procedures are specified that apply when a driver's license is suspended pursuant to administrative action following arrest or conviction and the suspended person has received day-for-day credit that is equal to or greater than the period of suspension due to a previously imposed period of suspension arising from the same incident. In such circumstances, the DOL must provide notice of full credit, provide for no further suspension, and not impose any additional license reissue fees. In addition, the written notice of impending license suspension provided by the DOL must include notification of the obligation to fulfill all statutory reinstatement requirements and pay the probationary license fee to avoid license suspension. If the person has fulfilled all obligations by the date specified in the written notice, the DOL must provide the probationary license with no further action on the part of the restricted person.

The fee for reissuance of a driver's license following an impaired driving-related suspension or revocation is increased from \$150 to \$170. Fifty-six percent of the fee, rather than 63 percent, is deposited in the Impaired Driving Safety Account.

#### 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. It is specified that the ignition interlock restriction period begins after any mandatory period of license suspension. When the DOL receives a declaration stating that the employer exemption to the ignition interlock restriction applies, the DOL must note the exemption on the restricted person's driving record.

Ignition interlock devices must have an alcohol set point preventing the motor vehicle from starting when the breath sample provided has an alcohol concentration of 0.020 or more (rather than 0.025 or more), and provisions regarding the alcohol set point for a random retest of the driver's BAC are harmonized to uniformly refer to a failure to pass a random retest with "lower than" 0.020 BAC.

An ignition interlock device must be inspected by a Washington State Patrol-certified technician at the end of the 180-day compliance period for evidence of tampering, and removal of the device by anyone other than a certified technician resets the compliance period. The DOL may waive one or more requirements for removal of an ignition interlock device for persons living out of state when compliance with the Washington requirement would be impractical and the person is in compliance with any equivalent requirement of their home jurisdiction.

The monthly Ignition Interlock Device Revolving Account fee imposed on persons with an ignition interlock restriction is increased from \$20 to \$21.

The crime of circumventing an ignition interlock device is modified to include tampering with any components of the device or otherwise interfering with its functionality. The term of ignition interlock restriction must be extended by 180 days when the DOL receives notice that a restricted person has been convicted of driving a vehicle without an ignition interlock device or of circumventing an ignition interlock device. Law enforcement may impound and authorize towing of any vehicle without an ignition interlock device that is being driven by a person with an ignition interlock restriction.

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. All payments for the cost reimbursement must be remitted directly to the public agency or agencies that incurred the cost associated with the emergency response.

**Votes on Final Passage:**

House	96	0	
Senate	47	1	(Senate amended)
House			(House refused to concur)
Senate	48	1	(Senate receded/amended)
House			(House refused to concur)
Senate			(Senate adheres to its position)
House	95	1	
Senate	49	0	(Senate amended)
House	96	1	(House concurred)

**Effective:** June 11, 2020  
January 1, 2022 (Sections 2, 3, 5–12, and 14–18)