

# SENATE BILL REPORT

## E2SSB 5299

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As Passed Senate, February 19, 2020

**Title:** An act relating to impaired driving.

**Brief Description:** Concerning impaired driving.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senators Padden, Frockt, Kuderer and Wagoner).

**Brief History:**

**Committee Activity:** Law & Justice: 2/04/19, 2/07/19 [DP-WM]; 1/23/20 [DPS-WM].  
Ways & Means: 2/19/19, 3/01/19 [DPS, DNP, w/oRec]; 2/05/20 [DP2S, w/oRec].

**Floor Activity:**

Passed Senate: 2/19/20, 45-3.

**Brief Summary of Engrossed Second Substitute Bill**

- Changes the look back period for prior offenses from a 10-year look back to a 15-year look back when a person has three or more prior convictions for either driving under the influence or physical control of a motor vehicle under the influence.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Majority Report:** That Substitute Senate Bill No. 5299 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Padden, Ranking Member; Holy, Kuderer, Salomon and Wilson, L..

**Staff:** Melissa Burke-Cain (786-7755)

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### SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** That Second Substitute Senate Bill No. 5299 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Operating, Capital Lead; Braun, Ranking Member; Brown, Assistant Ranking Member, Operating; Honeyford, Assistant

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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.*

Ranking Member, Capital; Becker, Billig, Carlyle, Conway, Darneille, Dhingra, Hunt, Keiser, Muzzall, Pedersen, Rivers, Schoesler, Van De Wege, Wagoner, Warnick and Wilson, L..

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

Signed by Senators Mullet, Capital Budget Cabinet; Hasegawa.

**Staff:** Kayla Hammer (786-7305)

**Background:** Impaired Driving. A person can commit driving under the influence (DUI) or physical control of a motor vehicle under the influence (PC) of intoxicating liquor or any drug offense if the person drives with a blood or breath alcohol concentration of 0.08 percent or higher, or is under the influence of or affected by liquor or any drug. A DUI or PC offense is punishable as a gross misdemeanor if the person has fewer than three prior DUI or PC offenses within seven years. It becomes a felony if a person has three or more prior offenses within ten years.

A prior offense is within seven years if the arrest for a prior offense occurred within seven years before or after the arrest for the current offense. Similarly, a prior offense is within ten years if the arrest for a prior offense occurred within ten years before or after the arrest for the current offense.

Prior offenses include convictions for:

- DUI or PC;
- vehicular homicide and vehicular assault if either was committed while under the influence;
- negligent driving after having consumed alcohol—wet neg, and reckless endangerment, if the original charge was DUI, PCI, vehicular homicide, or vehicular assault; and
- an equivalent local DUI or PC ordinance or out-of-state DUI law.

A deferred prosecution for DUI or wet neg is a prior offense even if the charges are dropped after successful completion of the deferred prosecution program.

Mandatory Arrest and Hold. A law enforcement officer must arrest a person without a warrant, and keep them in custody pending release on bail, personal recognizance, or a court order, when the officer has probable cause to believe that the person committed a DUI or PC offense and the officer knows the person has had at least one prior offense within the previous ten years, or has knowledge that the person is charged with or is awaiting arraignment for an offense that would qualify as a prior offense if it were a conviction. The requirement does not apply if the person requires immediate medical attention and is admitted to a hospital.

**Summary of Engrossed Second Substitute Bill:** The ten-year look back period for a person with three or more prior DUI or PC offenses is changed to a 15 year look-back, increasing the penalty from a gross misdemeanor to a felony offense for any person who has three or more prior DUI or PC offenses within that time. When funded, the Washington Association of Sheriffs and Police Chiefs shall review current laws and regulations regarding the sentencing structure for impaired driving offenses.

**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 Original Bill (Law & Justice) (Regular Session 2019):** PRO: This bill protects the public from the ravages of a senseless crime. A vehicular homicide occurred in Olympia just this weekend. A person was changing a tire on the shoulder of the road, and an impaired driver, driving on the shoulder, hit the disabled car and killed a seventeen-year-old woman in the car. We understand that changing the look back would probably be the most helpful legislative action to try to reduce such tragedies. A wide variety of people and organizations support this effort. We have seen cases in which a person with six or seven prior impaired driving convictions killed a family on the highway. If such a person had prior offenses that extended back beyond the ten-year look back, but only two offenses during the look back, the person would avoid the enhanced felony penalty. It might be useful to look at the data, and what other states and nations might be doing to see if we can do more to prevent the great likelihood of harm these habitual offenders cause. Some states have other look back periods. I suggest something more than the current 10-year look back is needed, but whether that is 15, 20, or 25, I do not know which would be best and I could support any of them. We would have to consider the costs and figure out how to pay for it. I suspect that extending the look back would cost less than going to a fourth felony. People drive while impaired many times before they are caught for drinking and now probably for drug use. The longer look back period will allow prosecutors to look at a more complete picture of the defendant's driving history. It would also promote respect for the law. WASPC supports either bill or both bills. I am a mother whose daughter was killed by a drunk driver. The driver had no prior arrests or convictions, but has subsequently had two DUI convictions. Many victims and their families as well as Mothers Against Drunk Driving (MADD) support the longest lock back possible. These are not accidents, they are crashes, and they are entirely preventable. These tragedies happen when someone makes the decision to use alcohol or drugs and then get behind the wheel while intoxicated. Our data shows that 25,000 persons were arrested for impaired driving in Washington in 2018; 16,000 of these arrests were by the Washington State Patrol's officers. The crash on I-5 in Olympia, where the woman in the disabled car died was investigated by the WSP. A child was in the car that struck the car changing a tire. We can not catch every impaired driver, but we would like to do that. Half of all traffic deaths in Washington, involve impaired driving. The deaths associated with alcohol use are holding steady, but those associated with poly drug use are increasing. Although only a small segment of society have multiple DUI arrests, persons with prior DUIs are 62 percent more likely to be involved in a traffic fatality. In a recent case, a car struck a bicyclist and the bicyclist died. The car's driver had PCP and other drugs in his system as well as six prior DUIs. It is not about locking people up; its about stopping bad behavior. How do we help people to help themselves? Although families are looking for the perpetrator to be punished, in law enforcement we want persons to make better life decisions too. We want to see a behavior change. Some of the efforts that work include DUI courts. DUI courts hold offenders accountable and that is one of the most effective tools we have available right now. DUI courts are not available statewide at the present time. We do

not use sobriety checkpoints, as many states do. Some European countries have reduced the blood alcohol level to 0.02 percent or 0.04 percent compared with Washington's 0.08 percent. The WSP tries to be as proactive as possible. We go into almost every high school in the state. We recognize that one of the most dangerous times for students is around prom and graduation. We put additional focus on that. Reducing the number of impaired driving deaths will take changing the culture. The culture is already changing, but culture change takes decades of work. Another project we are working on is intervention. We want to foster a willingness to intervene when people see someone who is impaired and about to get behind the wheel. We want to help people become more comfortable about intervening including teaching them ways to do it. The state of Utah just reduced their alcohol level to 0.05 percent. There is no data yet because the law change just became effective on January 1, 2019. One thing that reducing the blood alcohol level of a violation does is, it sends a message. With a 0.08 level, the message is, there is probably a blood alcohol level where it is safe to drive. Another factor we see is the degree of traffic deaths that have multiple contributing causes. The trifecta is the deadly combination of impaired driving, speeding, and no seat belt use. That may account for up to 30 percent of traffic-related deaths. We also see an increasing number of deaths involving poly drug use. There is a myth that marijuana use after drinking helps persons drive better. Of course, that is not true, but people seem to believe it.

**Persons Testifying (Law & Justice):** PRO: Senator Mike Padden, Prime Sponsor; Larry Haskell, Spokane County Prosecuting Attorney; James McMahan, WASPC; Captain Monica Alexander, WSP; Shelly Baldwin, Traffic Safety Commission; Joan Davis, citizen

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

**Staff Summary of Public Testimony on First Substitute (Law & Justice) (Regular Session 2020):** No public hearing was held.

**Persons Testifying (Law & Justice):** N/A

**Persons Signed In To Testify But Not Testifying (Law & Justice):** N/A

**Staff Summary of Public Testimony on Original Bill (Ways & Means) (Regular Session 2019):** *The committee recommended a different version of the bill than what was heard.* PRO: I want to mention one name to you, Natalia Martinez, who was killed 16 days ago right here in Olympia by an allegedly impaired driver, driving on the shoulder where she was stopped to change a tire. The whole purpose of this legislation is to reduce vehicular homicides. We know repeat offenders are far more likely to have a vehicular homicide or assault. There is a cost based on increased prison beds needed to house these individuals but what about the cost to our citizens and the loss of a human life? If this was a civil case and they went to trial, the value of life would be at least a million dollars. Motor vehicle crashes are the sixth leading cause of preventable death. This bill would give prosecutors enormous tools. The economic cost for impaired driving deaths was \$417 Million. People who have prior DUI are 67 times more likely to be involved in a fatal crash than a comparable person with no priors. This would give prosecutors much more flexibility to encourage treatment options. multiple substance DUI rising rapidly by 10 percent over the last five years.

**Persons Testifying (Ways & Means):** PRO: Senator Mike Padden, Prime Sponsor; Russell Brown, Washington Association of Prosecutors Association; Amy Freedheim, King County Prosecutor's Office; Shelly Baldwin, Legislative Director, Washington Traffic Safety Commission; James McMahan, Washington Association Sheriffs and Police Chiefs.

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

**Staff Summary of Public Testimony (Ways & Means) (Regular Session 2020):** No public hearing was held.

**Persons Testifying (Ways & Means):** N/A

**Persons Signed In To Testify But Not Testifying (Ways & Means):** N/A