

# HOUSE BILL REPORT

## SHB 1493

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### As Amended by the Senate

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

**Brief Description:** Concerning impaired driving.

**Sponsors:** House Committee on Community Safety, Justice, & Reentry (originally sponsored by Representative Goodman).

#### **Brief History:**

##### **Committee Activity:**

Community Safety, Justice, & Reentry: 2/6/23, 2/14/23 [DPS].

##### **Floor Activity:**

Passed House: 3/8/23, 97-0.

Senate Amended.

Passed Senate: 4/11/23, 48-0.

Senate Amended.

Passed Senate: 4/20/23, 48-0.

#### **Brief Summary of Substitute Bill**

- Amends the definition of serious traffic offense to include negligent driving and reckless endangerment.
- Modifies provisions relating to ignition interlock licenses addressing probation violations.
- Modifies provisions relating to ignition interlock device restrictions addressing physical disability waivers, self-employed drivers, and prior offenses.
- Allows court to produce full driver abstracts to treatment agencies.

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### HOUSE COMMITTEE ON COMMUNITY SAFETY, JUSTICE, & REENTRY

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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 part of the legislation nor does it constitute a statement of legislative intent.*

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Goodman, Chair; Simmons, Vice Chair; Mosbrucker, Ranking Minority Member; Griffey, Assistant Ranking Minority Member; Davis, Farivar, Fosse, Graham and Ramos.

**Staff:** Martha Wehling (786-7067).

**Background:**

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 the person drives while under the influence of intoxicating liquor, marijuana, or any drug, and is guilty of PC if the person has actual physical control of a vehicle while under the influence of intoxicating liquor, marijuana, 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 Driving Under the Influence and Actual Physical Control of a Vehicle While Under the Influence Offenses.* A DUI or PC offense is punishable 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 defendant has three or more prior impaired driving offenses within the previous 10 years, or has previously been convicted of felony DUI or PC, or of Vehicular Homicide or Vehicular Assault while under the influence of intoxicating liquor or any drug. Prior impaired driving offenses include convictions of DUI, PC, Vehicular Homicide, and Vehicular Assault, as well as other impaired driving-related offenses and offenses involving impaired operation of commercial vehicles, vessels, aircraft, snowmobiles, and nonhighway vehicles.

*Driver's License Suspension.* By driving a vehicle in Washington, the driver has given implied consent to a breath test for alcohol content in the event of arrest for impaired driving. When the Department of Licensing (DOL) proposes to withhold a person's driving privilege, due to an arrest for impaired driving, 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 between 90 days and four years, depending on the person's blood alcohol content 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. After suspension, the person must meet certain criteria and pay a license reissue fee to reinstate the license.

*Serious Traffic Offense.* A serious traffic offense includes nonfelony DUI, nonfelony PC, reckless driving, hit-and-run, or similar nonstate offenses that would be classified as a serious traffic offense. Serious traffic offenses are not included in a person's offender score if the person has not been convicted of another crime within five years. When scored, a serious traffic offense counts as one point for each conviction.

Negligent driving in the first degree includes operation of a motor vehicle negligently and that endangers any person or property. The person must exhibit the effects of consuming liquor or drugs. Negligent driving is a misdemeanor. Reckless endangerment is conduct that creates a substantial risk of death or serious physical injury to another person. It is a gross misdemeanor.

#### Ignition Interlock Requirements.

A person may apply to the DOL for an ignition interlock driver's license when the person has been convicted of DUI or PC, vehicular homicide while under the influence, or vehicular assault while under the influence. This includes convictions for charges originally filed as the prior offenses, or equivalent non-Washington convictions.

A person may 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 offense;
- 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.

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.

When 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. A person who is unable to operate an ignition interlock device due to a physical disability may apply to toll the restriction period. 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 180 days prior to removal have been free of certain incidents, such as failed start attempts or required maintenance.

An ignition interlock device must be installed on all vehicles operated by the person, and it must remain in place during the license suspension, revocation, or denial period. An ignition interlock user must pay the cost of installing, removing, and leasing the ignition interlock device, unless the company waives the costs or the person is indigent. In addition, the applicant must pay a monthly fee for the DOL's Ignition Interlock Device Revolving Account. If the ignition interlock device is removed or stops functioning, the person's license will be suspended until the device is reinstalled. It is a gross misdemeanor for a person to drive a vehicle without a properly installed device.

Ignition interlock devices are not required on an employer's vehicles that are driven by the convicted person when driving the vehicles is a requirement of employment during working hours. The person must provide the DOL with a declaration from the employer stating that the person is required to operate the employer's vehicle. The DOL must include a notation on the person's driving record applying the employer exemption. The employer exemption is not available if the employer's vehicle is assigned exclusively to the convicted person and is used solely for commuting to and from employment.

#### Deferred Prosecution and Probationary License.

A person charged with a misdemeanor or gross misdemeanor in district or municipal court may petition the court for a deferred prosecution, subject to certain conditions. For example, a petitioner is not eligible for more than one deferred prosecution for gross misdemeanor DUI or PC charges. Upon receiving notice of a deferred prosecution or conviction for an impaired driving offense, the DOL must order the petitioner to surrender his or her driver's license. The license is placed in a probationary status for five years. Upon reinstatement of the driving privilege after a period of suspension, the petitioner 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.

To qualify for a deferred prosecution, the petitioner must allege that a substance use disorder, mental health problem, or domestic violence behavior problem caused the petitioner to commit the charged offense and that treatment is necessary to prevent reoccurrence. An approved treatment provider, health center, or government agency must prepare a case history and risk assessment. The entity preparing the case history and risk assessment is based on the petitioner's underlying problem. For example, a petitioner seeking a deferred prosecution related to criminal mistreatment must be evaluated by and have a plan developed and facilitated by the Department of Social and Health Services.

If a person is accepted for deferred prosecution, the court will enter that information on the person's court docket. After entry, the DOL will order the person to surrender any non-probationary license, and must issue the person a probationary license. The person's license will be on probationary status for five years from the date of the violation.

### Driving Records.

As a condition of granting a deferred prosecution, the court may appoint a probation department or other appropriate person or agency to supervise the person. The supervisor must, at least once every six months, request an abstract of the person's driving record if the person's charge relates to operation of a motor vehicle.

The abstract of a person's driving record includes details regarding motor vehicle accidents in which the person was driving, motor vehicle convictions or infractions, driving privilege status, and identification of situations where the person failed to appear or respond to a traffic citation or infraction. Abstracts must be provided to certain entities, including the person, employers or prospective employers in certain situations, volunteer organizations where the position requires driving, transit authority for vanpool drivers, insurance carriers, alcohol or drug assessment or treatment agencies, certain attorneys, higher education, federal or local government, and state agencies, the superintendent of public instruction for school bus drivers, transportation network companies employing drivers, or research organizations. When the abstract is released, further release to third parties is prohibited. The length of the driving history in the abstract varies depending on the receiving entity. For alcohol or drug assessment or treatment agencies, the record is limited to the preceding five years.

### **Summary of Substitute Bill:**

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

### Serious Traffic Offense.

The definition of a serious traffic offense is amended to include first degree negligent driving and reckless endangerment in the situations where the conviction is the result of a Driving Under the Influence (DUI) or Actual Physical Control of a Vehicle While Under the Influence (PC) charge, or a vehicular homicide or vehicular assault charge while under the influence.

### Ignition Interlock Licensing and Restrictions.

*License Applications and Suspensions.* After the court accepts a deferred prosecution, the Department of Licensing (DOL) is required to notify the person that an application for a probationary license is required within 45 days. A person whose license has been suspended, revoked, or denied for violation of a mandatory condition of probation may apply to the DOL for an ignition interlock driver's license.

If a person violates certain reporting requirements, the court is given discretion not to impose a license suspension if the person proves the violation was cured within 30 days. These include failure to: furnish proof of progress in a required alcoholism or drug treatment program, furnish proof of financial responsibility, respond to a traffic infraction notice or hearing, reinstate a suspended or revoked license, or comply with a child support

order.

*Waiver and Tolling.* When a court grants a deferred prosecution, the time period for the ignition interlock device is calculated based on entry of the deferred prosecution and revocation as a single restriction. Drivers who received restriction start dates before June 9, 2016, may apply to the DOL to waive the restriction if they are unable to operate an ignition interlock device due to a physical disability.

*Self-Employed Exemption.* A person charged with failing to comply with the ignition interlock device requirement may assert an affirmative defense that the person is self-employed and qualifies for the employer exemption. The employer exemption does not apply unless the vehicle is used exclusively for the person's employment.

#### Driving Records.

A court-employed probation clerk or officer may provide an abstract of a person's full driving record to an assessment or treatment agency. The abstract must include records of alcohol-related offenses and whether any offense was originally charged as DUI or PC. No charge for the record is required if the person is indigent.

### **EFFECT OF SENATE AMENDMENT(S):**

#### The Senate amendment:

- authorizes a second deferred prosecution for an eligible person who is charged with gross misdemeanor Driving Under the Influence or Physical Control of a Vehicle Under the Influence by:
  - limiting eligibility for a second deferred prosecution to situations in which the petitioner has no prior offenses, and excluding a petitioner's first deferred prosecution from the definition of a prior offense;
  - limiting the petitioner to one deferred prosecution in certain circumstances;
  - modifying requirements for participation in a deferred prosecution based on the nature of the petitioner's underlying problem;
  - specifying requirements during two-year treatment program, including abstinence from alcohol and drugs, random testing, weekly and monthly counseling, and supervision; and
  - providing that a second deferred prosecution counts as one point on the petitioner's offender score for felony traffic offenses;
- increases the classification for an impaired driving offense from a gross misdemeanor to a felony when a person has three or more prior impaired driving offenses within 15 years, rather than within 10 years;
- creates a new Drug Offender Sentencing Alternative for Driving Under the Influence (DOSA-DUI) for a person's first-time felony impaired driving offense, including:
  - eligibility for the DOSA-DUI alternative;
  - requirement that the sentencing court imposes a prison-based or residential treatment DOSA-DUI depending on the length of the standard range sentence;

- requirements and restrictions for a DOSA-DUI sentence, including treatment, partial confinement, and community custody; and
- submission of a treatment plan, progress hearing, and treatment termination hearing for a residential DOSA-DUI; and
- specifies an effective date of April 1, 2024.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) Stakeholders proactively identify impaired driving issues to ensure the state's laws, such as the interlock ignition system, are working effectively. The Impaired Driving Work Group made recommendations which are included in this bill. The bill addresses those individuals charged with driving under the influence but whose charges are pled down to negligent driving or reckless endangerment. The provisions addressing abstract driving records create more access for individuals who need that abstract for relicensing or probation purposes. The employer exception has been abused, and the bill tightens the provisions for the intended use for employment-related purposes.

(Opposed) None.

**Persons Testifying:** Representative Roger Goodman, prime sponsor; James McMahan, Washington Association of Sheriffs and Police Chiefs; and Melissa Johnson, District and Municipal Court Judges Association.

**Persons Signed In To Testify But Not Testifying:** None.