

SENATE BILL REPORT

SHB 1493

As of March 26, 2023

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

Committee Activity: Law & Justice: 3/27/23.

Brief Summary of Bill

- Amends the definition of serious traffic offense to include negligent driving and reckless endangerment.
- Modifies provisions relating to ignition interlock licenses and device restrictions.
- Allows court to produce full driver abstracts to treatment agencies.
- Authorizes a person who participates in a deferred prosecution for a gross misdemeanor driving under the influence (DUI) or actual physical control of a vehicle under the influence (PC) charge to participate in a second deferred prosecution only in certain circumstances and provides that a second deferred prosecution for a DUI or PC offense counts as one point on a defendant's offender score.
- Modifies requirements for participation in a deferred prosecution depending on the nature of the petitioner's underlying problem.

SENATE COMMITTEE ON LAW & JUSTICE

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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.

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 ten 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.

Driver's License Suspension. Upon conviction of a DUI or PC offense, the Department of Licensing (DOL) must suspend or deny the privilege to drive for 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. 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 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 a 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 DOL when an ignition interlock restriction is imposed as a condition of release or after conviction and the offense involves alcohol.

When the ignition interlock restriction follows a conviction for an impaired driving offense, the period of restriction lasts one year, five years, or ten 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. 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.

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 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. 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.

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.

Requirements for Deferred Prosecution. The court may refer the petitioner for a diagnostic

investigation and evaluation to determine whether:

- the petitioner suffers from the problem described;
- the problem, if left untreated, has a probability of causing similar misconduct in the future;
- extensive and long-term treatment is required;
- effective treatment for the petitioner's problem is available; and
- the petitioner is amenable to treatment or willing to cooperate with child welfare services.

The entity conducting the evaluation must make a written report to the court stating its findings and recommendations. If the entity supports treatment, it must also recommend a treatment plan containing the type, nature, length, schedule, and cost of treatment. If the court approves the treatment plan and the petitioner agrees to comply with its terms and conditions, the court must accept the petitioner's request for a deferred prosecution.

A deferred prosecution based on alcoholism must be for a two-year period and requires:

- total abstinence from alcohol and all other nonprescribed, mind-altering drugs;
- participation in an intensive inpatient or outpatient program in a state-approved substance use disorder treatment program;
- participation in a minimum of two meetings per week of an alcoholism self-help recovery support group for the duration of the treatment program;
- participation in an alcoholism self-help recovery support group from the date of court approval of the plan to entry into intensive treatment;
- weekly outpatient counseling for a minimum of six months following the intensive phase of treatment;
- monthly outpatient contact for the remainder of the two-year deferred prosecution period;
- reservation of the decision to include the use of prescribed drugs, including disulfiram, as a condition of treatment to the treating facility and the participant's physician;
- treatment by a state-approved substance use disorder treatment program; and
- petitioner's signature and agreement to the terms and conditions of the program.

As a condition of granting a deferred prosecution, the court may appoint a probation department or other appropriate person or agency to supervise the petitioner. The supervisor must:

- at least once every six months, request an abstract of the petitioner's driving record if the petitioner's charge relates to operation of a motor vehicle; and
- at least once every month, contact the petitioner or any agency to which the petitioner has been directed for treatment.

The court will dismiss the charges pending against the petitioner three years after completion of the treatment plan, after proof is provided to the court that the petitioner successfully completed the two-year treatment plan. If a petitioner is convicted of a similar

offense prior to successful completion of the deferred prosecution, the deferred prosecution will be rescinded and the court will enter judgment. If the petitioner violates the deferred prosecution requirements, the court may terminate the deferred prosecution.

Probationary License. Upon receiving notice of a deferred prosecution or conviction for an impaired driving offense, DOL must order the petitioner to surrender their driver's license. The license is placed in probationary status for five years. Upon reinstatement of the driving privilege after a period of suspension, the petitioner must obtain a probationary license to operate a motor vehicle. If a person is accepted for deferred prosecution, the court will enter that information on the person's court docket. After entry, 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 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.

Felony Offender Scores. For most felony offenses, the Sentencing Reform Act provides a determinate sentencing system in which sentencing courts generally impose sentences within a standard range. The standard range for a person is determined by reference to a grid, which provides a base sentence according to the person's offender score and the seriousness level of the present offense. The offender score is a point total based on the person's prior dispositions and convictions. A felony DUI or PC conviction is included in the offender score.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Proposed Striking Amendment): 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, 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 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 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.

Eligibility for Deferred Prosecution. A person who participates in a deferred prosecution for a first-time gross misdemeanor DUI or PC charge may petition the court for a second deferred prosecution for a subsequent charge. A second deferred prosecution is only available for the person's next violation when the person has no other prior convictions of prior offenses. A person who did not participate in a deferred prosecution for a first-time gross misdemeanor DUI or PC charge is only eligible to petition the court for one deferred prosecution.

A person may petition the court for a second deferred prosecution while still under the jurisdiction of the court for a first deferred prosecution; however, the court must revoke the first deferred prosecution. A person may not participate in two deferred prosecutions at the same time unless the separate offenses were committed within seven days of each other and the person petitions to consolidate the offenses into a single deferred prosecution.

A petition for deferred prosecution must include a case history and risk assessment. The entity preparing the case history and risk assessment is based on the petitioner's underlying problem. A substance use disorder or mental health co-occurring disorder requires assessment by a state-approved behavioral health agency. Domestic violence requires a state-certified domestic violence treatment provider. Criminal mistreatment crimes require the Department of Children, Youth, and Families.

Proof that a petitioner has completed a domestic violence treatment plan will not result in the dismissal of charges against the petitioner until five years has passed following the entry

of the order of deferred prosecution.

Requirements for Deferred Prosecution. A program or department performing a diagnostic investigation and evaluation must determine whether the petitioner is either:

- amenable to treatment, demonstrated by completion of residential treatment or treatment based on the nature of the underlying problem; or
- willing to cooperate with child welfare services, for criminal mistreatment crimes.

A deferred prosecution based on either a substance use disorder or a mental health co-occurring disorder must be for a two-year period and impose the following requirements:

- total abstinence from alcohol and all other nonprescribed, mind-altering drugs;
- periodic, random urinalysis or breath analysis;
- treatment within or approved by a state-approved behavioral health agency;
- weekly outpatient counseling for a minimum of six months following the intensive phase of treatment;
- monthly outpatient contact for the remainder of the two-year deferred prosecution period;
- decision whether to include the use of prescribed drugs, including disulfiram, as a condition of treatment, is made by the treating facility and the participant's physician; and
- petitioner's agreement to the program.

The petitioner's progress under the treatment plan developed by the agency and approved by the court must be provided to the court monthly.

A deferred prosecution based on substance use disorder must also impose the following requirements:

- completion of an intensive outpatient or residential inpatient treatment program, depending on the severity of the diagnosis; and
- participation in at least two meetings per week of a self-help recovery support group for the duration of the treatment program.

A deferred prosecution based on a mental health co-occurring disorder must also impose the following requirements:

- completion of either the substance use disorder requirements or an outpatient program; and
- completion of individual or group mental health services.

A deferred prosecution based on a mental health disorder where the conduct did not involve and was not caused by alcohol, drugs, or substance use, must include treatment recommended by a mental health provider.

As a condition of granting a deferred prosecution, the court may appoint a probation department or other appropriate person or agency to supervise the petitioner. The

supervisor must:

- request an abstract of the petitioner's driving record at least once every three months, if the petitioner's charge relates to operation of a motor vehicle;
- contact the petitioner at least once a month until treatment is completed;
- review the petitioner's criminal history at least once every three months until the end of the deferral period; and
- report violations or noncompliance to the court within five business days or as soon as practicable.

Felony Offender Scores. A deferred prosecution for a second or subsequent DUI or PC offense, or an equivalent local ordinance, counts as one point on a defendant's offender score.

Appropriation: None.

Fiscal Note: Available.

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

Effective Date: The bill takes effect on February 1, 2024.