

SENATE BILL REPORT

SHB 1493

As of March 29, 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, 3/28/23 [DPA-TRAN].

Transportation: 3/30/23.

Brief Summary of Amended 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.
- Changes the period for reviewing prior convictions of impaired driving from a 10-year period to a 15-year period for determining whether the current offense of impaired driving is a felony.

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.

- Creates a new drug offender sentencing alternative for individuals convicted of felony impaired driving offenses.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass as amended and be referred to Committee on Transportation.

Signed by Senators Dhingra, Chair; Trudeau, Vice Chair; Padden, Ranking Member; Kuderer, McCune, Pedersen, Salomon, Torres, Valdez, Wagoner and Wilson, L..

Staff: Ryan Giannini (786-7285)

SENATE COMMITTEE ON TRANSPORTATION

Staff: Bryon Moore (786-7726)

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.

Sentencing Alternatives. When a person is convicted of a felony offense, a sentencing court is generally required to impose a term of confinement based on a standard range provided by statute. In some circumstances, sentencing courts have discretion to order sentencing alternatives. Sentencing alternatives generally result in a person serving a shorter term of confinement, and sometimes serving no term of confinement. Instead, the person may be required to participate in certain programs or treatment, or to submit to a form of partial confinement.

Drug Offender Sentencing Alternative. The drug offender sentencing alternative (DOSA) either reduces or eliminates incarceration time in exchange for the offender participating in supervision and treatment. A person convicted of a felony is eligible for a DOSA if certain criteria are met, including:

- the conviction is for an offense that is not a felony impaired driving offense, a violent offense, or a sex offense, and the violation does not involve a firearm or deadly weapon sentence enhancement;
- the offender has no current or prior convictions for a sex offense at any time, and no violent offense within the ten years before conviction of the current offense;
- if the offense is a violation of the Uniform Controlled Substances Act, a drug violation, or it involved only a small quantity of the particular substance as determined by the judge;
- the offender is not subject to a federal immigration deportation detainer or order;
- the end of the standard sentence range for the current offense is greater than one year; and
- the offender has not received a DOSA more than once in the prior ten years before the current offense.

When determining eligibility, the court may order the Department of Corrections (DOC) to complete either a risk assessment report or a substance abuse disorder, or both. If the court determines the offender is eligible for the alternative, it must waive imposition of the standard-range sentence and impose a sentence consisting of either a prison-based alternative or a residential substance use disorder treatment-based alternative.

Under the prison-based alternative, the offender is sentenced to a term of incarceration equal to one-half the midpoint of the standard range or 12 months, whichever is greater, and one-half the midpoint of the standard range as a term of community custody. The incarceration and community custody terms must include substance abuse treatment.

Under the residential substance use disorder treatment-based alternative, the offender is sentenced to a term of community custody equal to one-half the midpoint of the standard sentence range or two years, whichever is greater, conditioned on the offender entering and remaining in residential substance use disorder treatment for a period set by the court between three and six months. The term of community custody must also include a

condition to participate in treatment.

The court may bring an offender serving a DOSA back to court at any time to monitor progress or determine whether there have been violations of the conditions of sentence. If the offender has violated the conditions or has not satisfactorily progressed in treatment, the court may modify the conditions of community custody or impose other sanctions, including ordering the person to serve a term of total confinement within the standard range for the offense.

Partial Confinement. For certain offenders, a term of total confinement may be converted to partial confinement. Partial confinement is confinement up to one year in a facility operated or contracted by the state or other unit of government, or in an approved residence, for a substantial portion of each day with the balance of the day spent in the community.

Home detention is a program of partial confinement in which the offender is confined in a private residence 24 hours a day, unless otherwise authorized by the court or other supervising agency, and is subject to electronic monitoring.

Work release is a program of partial confinement available to offenders who are employed or engaged as a student in a regular course of study at school.

During the period of partial confinement, an offender may be required to comply with crime-related prohibitions and affirmative conditions imposed by the court or DOC. If the offender violates the rules of the partial confinement program, the offender may be required to serve the remainder of the term in total confinement.

Community Custody. Community custody is a portion of an offender's sentence served in the community, subject to conditions imposed by the court and DOC. Courts must order community custody for offenders convicted of certain crimes or in accordance with a sentencing alternative. If an offender violates the conditions of community custody, they may be subject to confinement or nonconfinement-based sanctions.

Summary of Amended Bill: Impaired Driving. The 10-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.

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.

Eligibility for the Impaired Driving Drug Offender Sentencing Alternative. An offender is eligible for the impaired driving DOSA if the offender is convicted of a felony DUI or felony PC and does not have a prior conviction for vehicular homicide, vehicular assault, felony DUI, or felony PC. A motion for an impaired driving DOSA may be made by the court, the offender, or the state if the midpoint of the standard sentence range is 26 months or less. If an offender has a higher midpoint, a joint agreement of the state and offender is required.

If the sentencing court determines the offender is eligible for an impaired driving DOSA, and the alternative sentence is appropriate, the court must waive imposition of the standard sentence and impose a prison-based DOSA if the low end of the standard range sentence is greater than 24 months; or impose a residential treatment-based alternative specific to impaired driving offenders if the low end of the standard sentence range is 24 months or less.

To assist the court in making its eligibility determination, the court may order DOC to complete a risk assessment report, a substance use disorder screening report, or both. If the court is considering imposing a sentence under the residential treatment-based alternative, the court may also order DOC to examine the offender and assess whether:

- the offender suffers from a substance use disorder;
- effective treatment for the offender's substance use disorder is available from a provider licensed or certified by the Department of Health (DOH); and
- the offender and the community will benefit from the use of the alternative sentence.

Impaired Driving Drug Offender Sentencing Alternative Requirements. When the court

imposes a prison-based impaired driving DOSA, the court must impose a sentence equivalent to, and subject to the same requirements and restrictions as, the traditional prison-based DOSA program already established in statute.

An offender who is eligible for a residential treatment-based alternative is sentenced to all of the following:

- if necessary, an indeterminate term of confinement no more than 30 days in a county facility, to facilitate direct transfer to a residential substance use disorder treatment facility;
- treatment in a licensed or certified residential substance use disorder treatment program for a period set by the court up to six months, with treatment completion and continued care delivered in accordance with rules established by DOH—when establishing rules, DOH must consider criteria established by the American Society of Addiction Medicine criteria;
- 24 months of partial confinement to consist of 12 months work release followed by 12 months of home detention with electronic monitoring; and
- 12 months of community custody.

The court must impose treatment and other appropriate conditions during the periods of partial confinement and community custody. An offender may be required to pay \$30 per month while on community custody to offset the cost of monitoring for alcohol or controlled substances. Within available resources, DOC must make substance use disorder assessment and treatment services available to the offender.

Monitoring and Enforcement. When an offender is sentenced to the residential treatment-based alternative DOSA, the treatment provider must send the treatment plan to the court within 30 days of the offender's arrival to the residential treatment program. The court must schedule a progress hearing during the period of treatment and a treatment termination hearing for three months before the expiration of the term of community custody. Before these hearings, the treatment provider and DOC must submit written reports to the court and parties regarding compliance with treatment and monitoring requirements and recommendations regarding termination from treatment.

At the progress hearing or treatment termination hearing, the court may:

- authorize termination of community custody on the predetermined expiration date;
- continue the hearing, with or without modifying the conditions of partial confinement or community custody; or
- impose a term of total confinement equal to one-half the midpoint of the standard sentence range, followed by a term of community custody.

Under either the prison-based or residential-based program, the court may bring the offender into court at any time to evaluate treatment progress or determine whether there have been any violations of the conditions of sentence. If the offender violates conditions or is failing to make satisfactory treatment progress, the court may modify the conditions of

partial confinement or community custody, or order the offender to serve a term of total confinement within the standard sentencing range of the offender's current offense.

An offender sentenced to total confinement after termination from an impaired driving DOSA is entitled to full credit for any time previously served under the impaired driving DOSA in total confinement or residential treatment, and 50 percent credit for any time previously served in partial confinement or community custody.

An offender serving a term of community custody following termination from the impaired driving DOSA is granted no credit for time served in community custody prior to termination.

Miscellaneous. Changes are made to clarify the impaired driving DOSA is separate from the traditional DOSA that exists in current law, and references to the impaired driving DOSA are added to relevant portions of the Sentencing Reform Act.

EFFECT OF LAW & JUSTICE COMMITTEE AMENDMENT(S):

- Changes the period for reviewing prior convictions of impaired driving from a 10-year period to a 15-year period for determining whether the current offense of impaired driving is a felony.
- Creates a new drug offender sentencing alternative for individuals convicted of felony impaired driving offenses.

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.

Staff Summary of Public Testimony on Proposed Striking Amendment (Law & Justice): *The committee recommended a different version of the bill than what was heard.*

PRO: Washington is facing a crisis in traffic safety. The numbers of fatal crashes are higher than they have been in the past 20 years. Over 60 percent of these fatal crashes involve impairment. Impaired drivers are the most dangerous people on the roads to everyone, including themselves. Not all DUI drivers have substance use disorders, but those that do must be incentivized to get treatment on their first arrest. This bill adds an opportunity for a second deferred prosecution on a person's second arrest if a driver had a deferred prosecution on their first arrest. Treatment is more effective and successful earlier in the process, as people with substance use disorders still have a family, home, job, insurance, and their health. DUI drivers should not be allowed to save a deferred prosecution or wait until a third or later arrest, because this promotes recidivism. This bill will help keep

Washington's roads, neighborhoods, and communities safe. There is an issue in the striking amendment about whether a person needs to do two deferred prosecutions in a row. If a person is assessed on the person's second DUI as only needing relapse prevention, or something short of the two-year program, this should not disqualify a person from getting a second deferred prosecution and the full two-year treatment.

Persons Testifying (Law & Justice): PRO: Representative Roger Goodman, Prime Sponsor; Amy Freedheim, Senior Deputy Prosecutor King County - Felony Traffic; Julie Mitchell, Association of Alcoholism & Addiction Programs of WA; Elizabeth Gould.

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