

SENATE SUMMARY OF HOUSE AMENDMENTS

SB 277 By Senator Perry

KEYWORD AND SUMMARY AS RETURNED TO THE SENATE

DWI. Provide changes to DWI laws. (1/1/15)

SUMMARY OF HOUSE AMENDMENTS TO THE SENATE BILL

1. Clarified penalty provisions for a second offense DWI when the first offense was vehicular homicide, first degree vehicular negligent injuring, or third degree feticide.
2. Made technical corrections.

DIGEST OF THE SENATE BILL AS RETURNED TO THE SENATE

Perry

SB No. 277

Present law defines the crime of operating a vehicle while intoxicated (DWI) as the operating of any motor vehicle under any of the following conditions:

- (1) The operator is under the influence of alcoholic beverages.
- (2) The operator is under the influence of a controlled dangerous substance.
- (3) The operator is under the influence of one or more drugs that are not controlled dangerous substances, whether alone or in combination with alcohol.
- (4) The operator's blood alcohol concentration (BAC) is 0.08% or more by weight based on grams of alcohol per 100 cubic centimeters of blood.

Proposed law retains present law.

Present law (Child Endangerment Law) provides that when the state proves that a minor child 12 years of age or younger was a passenger in the vehicle, the mandatory minimum sentences for DWI first, second, and third DWI offenses cannot be suspended and at least two years shall be served without benefit of suspension of sentence for a fourth or subsequent DWI offense.

Proposed law retains present law relative to first, second, and third DWI offenses. For fourth and subsequent DWI offenses, proposed law amends present law to provide that the mandatory minimum sentence imposed for such offenses shall not be suspended.

Present law provides that a "prior conviction" for purposes of present law DWI sentencing provisions includes a conviction for the present law crimes of DWI, vehicular homicide, vehicular negligent injuring, first degree vehicular negligent injuring, or a conviction under the laws of any other jurisdiction that prohibits the operation of a vehicle while impaired or under the influence of alcohol, drugs, or any controlled dangerous substance. Present law further provides that a "prior conviction" does not include a conviction for an offense committed more than ten years prior to the commission of the crime for which the defendant is being tried. Present law further provides that periods of time during which the offender was awaiting trial, on parole or probation, under an order of attachment for failure to appear, or incarcerated are to be excluded in computing the ten-year period.

Proposed law retains present law and adds the present law crime of third degree feticide to the list of crimes constituting a prior conviction.

Present law provides that a conviction of a third or subsequent offense DWI is presumptive evidence of the existence of a substance abuse disorder in the offender that poses a serious threat to the health and safety of the public. Proposed law retains present law.

Present law provides that if an offender placed on probation for a conviction of DWI fails to complete required substance abuse treatment, or fails to participate in a driver improvement program, or violates any other condition of probation, the offender's probation may be revoked, and he may be ordered to serve the balance of the sentence of imprisonment without credit for time served under home incarceration. Proposed law retains present law.

Present law provides that on a conviction of a first offense DWI, the offender is to be fined between \$300 and \$1,000, and imprisoned for not less than ten days nor more than six months. Present law further provides that imposition or execution of sentence can be suspended under certain circumstances provided for by present law, including serving 48 hours in jail or performing at least four eight-hour days of community service, half of which must consist of litter abatement or collection.

Proposed law retains present law but changes the requirement of community service from four eight-hour days to 32 hours. Proposed law also adds the requirement of participation in a court-approved substance abuse program, which may include an assessment to determine if the offender has a substance abuse disorder. Proposed law further provides that the court may require an ignition interlock device be installed on the offender's vehicle.

Present law requires that on a conviction of a first offense DWI, if the offender had a BAC of 0.15% or more, then at least 48 hours of the sentence must be served without the benefit of parole, probation, or suspension of sentence. Present law further requires that if the offender had a BAC of 0.20% or more, then he is to be fined between \$750 and \$1,000 and serve at least 48 hours of the sentence without the benefit of parole, probation, or suspension of sentence. Proposed law retains present law.

Present law provides that on a conviction of a first offense DWI when the offender's BAC was 0.20% or more, the offender's driver's license is to be suspended for two years. Present law further allows the offender to obtain a restricted driver's license upon proof to the Dept. of Public Safety and Corrections (DPS&C) that he has installed an ignition interlock device on his vehicle. Proposed law retains present law.

Present law provides that all or part of the offender's sentence may be served under home incarceration. Proposed law retains present law.

Proposed law provides that the total period of imprisonment for first offense DWI, including imprisonment for default in payment of a fine or costs, cannot exceed six months.

Present law provides that on a conviction of a second offense DWI, regardless of whether the second offense occurred before or after the first conviction, the offender is to be fined between \$750 and \$1,000, and imprisoned for not less than 30 days nor more than six months. Present law further provides that at least 48 hours of the sentence is to be served without benefit of parole, probation, or suspension of sentence. Present law further provides that the offender may be sentenced to home incarceration, and provides that imposition or execution of the remainder of the sentence over 48 hours can be suspended under certain circumstances provided for by present law, including serving 15 days in jail or performing at least 30 eight-hour days of community service, half of which must consist of litter abatement or collection, participating in a court-approved substance abuse program, and participating in a court-approved driver improvement program.

Proposed law requires a minimum of 15 days in jail rather than a fixed period of 15 days in jail as provided for by present law. Proposed law provides that the total period of imprisonment for first offense DWI, including imprisonment for default in payment of a fine or costs, cannot exceed six months. Proposed law further provides that the substance abuse program provided for by present law may include assessment to determine if the offender has a substance abuse disorder. Proposed law further provides that the court is to require an ignition interlock device be installed on the offender's vehicle for at least six months.

Proposed law otherwise retains present law.

Present law requires that on a conviction of a second offense DWI, if the offender had a BAC of 0.15% or more, then at least 96 hours of the sentence must be served without the benefit of parole, probation, or suspension of sentence. Present law further requires that if the offender had a BAC of 0.20% or more, then he is to be fined \$1,000 and serve at least 96 hours of the sentence without the benefit of parole, probation, or suspension of sentence.

Proposed law retains present law.

Present law provides that on a conviction of a second offense DWI when the offender's BAC was 0.20% or more, the offender's driver's license is to be suspended for four years. Present law further requires the installation of an ignition interlock device on the offender's vehicle. Present law further allows the offender to obtain a restricted driver's license upon proof to DPS&C that the ignition interlock device has been installed on the offender's vehicle.

Proposed law retains present law.

Present law provides that on a conviction of a second offense DWI when the arrest for the second offense occurs within one year of the commission of the first offense, the offender is to be imprisoned for 30 days without benefit of parole, probation, or suspension of sentence and must participate in a court-approved substance abuse program and in a court-approved driver improvement program.

Proposed law retains present law and clarifies that the defendant convicted of a second offense within one year of the first offense is also to be fined \$1,000.

Present law provides that all or part of the offender's sentence for a second offense DWI may be served under home incarceration if otherwise allowed under present law relative to home incarceration generally. Proposed law retains present law.

Present law provides that on a conviction of a second offense DWI when the first offense was for the present law crime of vehicular homicide or first degree vehicular negligent injuring, the offender is to be fined \$2,000 and imprisoned, with or without hard labor, for not less than one year nor more than five years, at least six months of which must be without benefit of parole, probation, or suspension of sentence. Present law further provides that the remainder of the sentence may be suspended if the offender is placed on probation with the requirements that he serve 15 days in jail and participate in a court-approved substance abuse program and a court-approved driver improvement program, or perform 30 eight-hour days of community service.

Proposed law retains present law and adds the present law crime of third degree feticide to the list of crimes resulting in an enhanced sentence for second offense DWI. Proposed law adds that the substance abuse program provided for by present law may include an assessment to determine if the offender has a substance abuse disorder. Proposed law also adds that an offender placed on probation must be placed in a home incarceration program for at least six months.

Present law provides that on a conviction of a third offense DWI, regardless of whether the third offense occurred before or after an earlier conviction, the offender is to be fined \$2,000 and imprisoned, with or without hard labor, for between one and five years, with one year of the sentence served without benefit of parole, probation, or suspension of sentence. Present law further provides that the one-year mandatory minimum sentence can be suspended if the offender is accepted into a drug division program as provided for by present law.

Present law further provides that the remainder of the sentence can be suspended and the offender placed on supervised probation with DPS&C for the remainder of the sentence, with the conditions that the offender participate in 30 eight-hour days of court-approved community service and either undergo an evaluation by the Dept. of Health and Hospitals (DHH) to determine the nature and extent of the offender's substance abuse disorder and participate in any recommended treatment plan, or participate in substance abuse treatment in a program provided by a drug division pursuant to present law. Present law further requires an offender placed on probation pursuant to present law be placed in a home incarceration program for at least six months. Present law further provides that the offender's vehicle may be seized and sold pursuant to present law.

Proposed law retains present law but changes the community service requirement from 30 eight-hour days to 240 hours.

Present law requires that an ignition interlock device be installed on the offender's vehicle and allows the offender to obtain a restricted driver's license. Proposed law retains present law.

Proposed law provides that if the offender convicted of a third offense DWI has previously received the benefit of parole, probation, or suspension of sentence, then on a subsequent conviction the offender is to be fined \$2,000 and imprisoned at hard labor for between two and five years. Proposed law further provides that at least two years of the sentence must be served without benefit of parole, probation, or suspension of sentence. Proposed law further provides that such offender cannot be sentenced to home incarceration unless certain proposed law conditions are met.

Present law provides that on a third or subsequent conviction of DWI, in addition to any other sentence, the court is to order, upon motion of the prosecuting district attorney, that the vehicle being operated by the offender at the time of the offense be seized and impounded, and sold at auction in accordance with present law. Present law further provides that the proceeds of the sale are to be used first to pay court costs and towing and storage costs, and the remainder is to be allocated pursuant to law. Proposed law retains present law.

Present law provides that on a conviction of a fourth offense DWI or subsequent DWI offense, regardless of whether the fourth or subsequent offense occurred before or after an earlier conviction, the offender is to be fined \$5,000 and imprisoned, with or without hard labor, for between ten and 30 years, with two years of the sentence served without benefit of parole, probation, or suspension of sentence. Present law further provides that the two-year mandatory minimum sentence can be suspended if the offender is accepted into a drug division program as provided for by present law.

Proposed law retains present law and adds that the mandatory minimum sentence of two years for fourth offense DWI cannot be served on home incarceration.

Present law provides that if the offender has previously participated in a drug division probation program pursuant to present law pursuant to a sentence imposed on a third or subsequent offense DWI conviction, then three years of the sentence must be imposed without benefit of parole, probation, or suspension of sentence.

Proposed law retains present law and adds that the offender is not to be eligible to have the mandatory portion of his sentence suspended because of his participation in a drug division program.

Present law provides that the court may suspend all or any part of the remainder of the sentence of imprisonment, provided that the offender is placed on supervised probation with DPS&C for a period of five years, participate in 40 eight-hour days of court-approved community service, be placed in a home incarceration program, and submit to either an evaluation by DHH and participate in any treatment plan recommended or participate in substance abuse treatment in a program provided by a drug division pursuant to present law.

Proposed law retains present law but changes the requirement of community service from 40 eight-hour days to 320 hours.

Present law requires the installation of an ignition interlock device on the offender's vehicle. Present law further allows the offender to obtain a restricted driver's license after one year of suspension upon proof to DPS&C that the ignition interlock device has been installed on the offender's vehicle. Proposed law retains present law.

Present law provides that if the offender has previously been required to participate in substance abuse treatment or home incarceration pursuant to a sentence imposed on a conviction of a third offense DWI violation, then on a conviction of a fourth or subsequent offense the offender is to be imprisoned at hard labor for not less than ten nor more than 30 years, at least three years of which are to be imposed without benefit of parole, probation, or suspension of sentence. Present law further provides that the offender is not eligible to have the mandatory portion of his sentence suspended because of his participation in a drug

division program and the mandatory minimum sentence cannot be served on home incarceration.

Proposed law retains present law except to change the mandatory minimum sentence from three years to five years and adds a fine of \$5,000.

Present law provides that if the remainder of the sentence is suspended, the offender is to be placed on supervised probation with DPS&C for a period of five years but the offender cannot be sentenced to substance abuse treatment.

Proposed law retains present law and adds that nothing in proposed law prohibits the court from ordering substance abuse treatment if it determines that the offender is able to pay for the substance abuse treatment.

Present law provides that if the offender has previously received the benefit of suspension of sentence, probation, or parole on a conviction of a fourth or subsequent offense DWI, then on a subsequent conviction of a fourth or greater offense, the offender is to be imprisoned at hard labor for between ten and 30 years.

Proposed law retains present law and adds a fine of \$5,000.

Present law provides that the offender's vehicle may be seized and sold pursuant to present law. Proposed law retains present law.

Present law provides that the state will pay the costs of substance abuse treatment.

Proposed law provides that the state will pay the costs of substance abuse treatment only on third and subsequent DWI convictions, except where imposed as a condition of probation.

Proposed law provides that for felony DWI violations, the mandatory minimum sentence imposed by the court cannot be served on home incarceration unless either DPS&C recommends home incarceration and specific conditions of that home incarceration, or the district attorney recommends home incarceration.

Present law provides that except as otherwise provided by present law, on a misdemeanor DWI violation or on a felony DWI violation after the offender has served the mandatory minimum sentence, the court may sentence the offender to home incarceration. Present law further provides that when the court sentences an offender to home incarceration, the offender is subject to special conditions to be determined by the court, including electronic monitoring, curfew restrictions, obtaining employment, and participation in a court-approved driver improvement program.

Proposed law retains present law and adds that the court may also order nonelectronic monitored home incarceration as a condition of probation for a first or second conviction where the period of home incarceration is less than five days.

Present law provides that the activities of the offender outside of his home are to be limited to traveling to and from work, church services, Alcoholics Anonymous meetings, and a court-approved driver improvement program.

Proposed law retains present law and adds Narcotics Anonymous meetings and other secular-based addiction recovery group meetings, accredited educational institutions, meetings with a probation or parole officer, court-ordered community service activities, and court-ordered substance abuse treatments to the list of approved activities outside the home during the period of home incarceration.

Proposed law provides that an offender who has been convicted of any second violation of any state or local law or ordinance prohibiting operating a vehicle while intoxicated, committed within five years of the commission of any prior DWI violation, is not eligible for home incarceration until the offender has first served a minimum of 48 consecutive hours of imprisonment.

Present law provides that when the offender is on probation for a third or subsequent offense, or on a second offense with home incarceration, a home visitation is to be conducted at least

once per month by DPS&C for the first six months, and after the first six months, the level of supervision is to be determined based upon a risk assessment instrument. Proposed law retains present law.

Present law provides that an offender who is ordered to install an ignition interlock device as a condition of probation cannot operate, rent, lease, or borrow a motor vehicle unless that vehicle is equipped with a functioning ignition interlock device, or request another person to blow into an ignition interlock device or to start a vehicle equipped with the device to provide an operable vehicle.

Proposed law retains present law and adds the condition that the offender cannot violate the conditions of his restricted driver's license as set by DPS&C.

Proposed law provides that if the court imposes the use of an ignition interlock device as a condition of probation, the offender must provide proof of compliance to the court or the probation officer within 30 days, or the court is to revoke the offender's probation. Proposed law retains present law.

Present law defines "community service activities" to include participation in a litter abatement or collection program and duty in any morgue, coroner's office, or emergency treatment room of a state-operated hospital or other state-operated emergency treatment facility, with the consent of the administrator of the morgue, coroner's office, hospital, or facility. Proposed law retains present law.

Present law provides that an offender who participates in a litter abatement or collection program has no cause of action for damages against the entity conducting the program or supervising the offender's participation therein, nor against any official, employee, or agent of such entity, for any injury or loss suffered during his participation in the program, if such injury is a direct result of the lack of supervision or act or omission of the supervisor, unless the injury or loss was caused by the intentional or grossly negligent act or omission of the entity or its official, employee, or agent. Proposed law retains present law.

Present law defines the crime of underage operating while intoxicated (underage DWI) as the operating of any motor vehicle, aircraft, watercraft, vessel, or other means of conveyance when the operator's BAC is 0.02% or more, if the operator is under the age of 21. Proposed law retains present law.

Present law provides that if the offender's BAC is 0.08 % or more, he is to be charged under present law relative to DWI rather than underage DWI.

Present law provides that on a first conviction of underage DWI the offender is to be fined between \$100 and \$250 and participate in a court-approved substance abuse and driver improvement program.

Proposed law retains present law and adds a term of imprisonment of between ten days and three months, which sentence can be suspended if the offender performs 32 hours of community service and participates in a court-approved substance abuse and driver education program.

Present law provides that on a second or subsequent conviction of underage DWI the offender is to be fined between \$150 and \$500 and imprisoned for between ten days and three months, which sentence can be suspended if the offender performs ten eight-hour days of community service and participates in a substance abuse and driver improvement program.

Proposed law increases the minimum fine from \$150 to \$250 and increases the minimum term of imprisonment from ten days to 30 days and increases the maximum sentence from three months to six months, which sentence can be suspended if the offender is placed on probation with the minimum conditions that he serve 48 hours in jail or perform at least 80 hours of community service, participate in a driver improvement program, and participate in a substance abuse program, which is to include a screening procedure to determine the portions of the program that may be applicable to an individual offender.

Proposed law retains these provisions but authorizes the court to sentence an offender to home incarceration for underage DWI and authorizes the court to order the offender to install an ignition interlock device on his vehicle.

Present law provides relative to the crime of refusal to submit to chemical tests, and provides that no person under arrest for DWI or any other similar law or ordinance may refuse to submit to a chemical test when requested to do so by a law enforcement officer, if he has refused to submit to such test on two previous and separate occasions of any such violation.

Proposed law retains present law.

Present law provides that whoever violates the provisions of present law is to be fined between \$300 and \$1,000 and imprisoned for between ten days and six months, which sentence can be suspended only if the offender is either placed on probation with the minimum conditions that he serve two days in jail and participate in substance abuse and driver improvement programs, or perform 32 hours of community service and participate in substance abuse and driver improvement programs. Proposed law retains present law.

Present law provides relative to the crime of operating a vehicle while under suspension for certain prior offenses, and provides that it is unlawful to operate a motor vehicle on a public highway where the operator's driving privileges have been suspended under the authority of certain provisions of present law, unless the person is operating the vehicle to obtain emergency medical care for himself or any other person. Proposed law retains present law.

Present law provides that whoever violates the provisions of present law is to be imprisoned for between 15 days and six months without benefit of suspension of imposition or execution of sentence, except that when the operator's driving privileges were suspended for manslaughter, vehicular homicide, or negligent homicide, the offender is to be imprisoned for between 60 days and six months without benefit of suspension of imposition or execution of sentence. Proposed law retains present law.

Effective January 1, 2015.

(Amends R.S. 14:98, 98.1, 98.2, and 98.3; Adds R.S. 14:98.4, 98.5, 98.6, 98.7, and 98.8)

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