

Drunk Driving

Drunk Driving (DUI)

A person is guilty of driving while under the influence of an intoxicating liquor or drug (DUI) if the person drives a vehicle within this state while the person is affected by the liquor or drug or the person has, within two hours after driving, a breath or blood alcohol concentration of 0.08 or higher. Drunk drivers continue to wreak havoc on our highways. About 41 percent of all traffic crashes are alcohol-related with more than 17,000 Americans dying and over 600,000 Americans injured each year in alcohol-related traffic crashes. Someone dies in an alcohol-related traffic crash every 30 minutes. Three out of every ten Americans face the possibility of being directly involved in an alcohol-related traffic crash during their lifetime. People who are injured and killed by drunk drivers are not "accident" victims. The drunk driver made two intentional choices -- to drink and to drive.

Overview

Driving while under the influence (DUI) is a gross misdemeanor. The maximum confinement sentence for a gross misdemeanor is one year in jail. The DUI law contains a complex system of mandatory minimum penalties that escalate based on several factors. These factors include the number of prior offenses and the offender's blood alcohol concentration (BAC). The mandatory minimum jail sentences range from one day in jail (or 15 days of electronic home monitoring) for a first-time offender with a low BAC to 120 days in jail (and 150 days of electronic home monitoring) for a 2nd or 3rd time offender with a high BAC. Deferred prosecutions are available only for non-felony crimes. Even though successful completion of a deferred prosecution treatment program means charges are dropped, a deferred prosecution granted to a person charged with DUI counts as a prior offense. In addition to serving mandatory jail time, a DUI offender is subject to many other sanctions. These include fines, loss of driving privileges, alcohol assessment, and may include the mandatory use of an ignition interlock system on any vehicle the offender drives.

Legislative History

As a result of Republican pressure to get serious about DUI, several bills dealing with DUI have been enacted over the past few years. SSB 5644 from 2005 provided that when a license suspension is required due to certain violations, the Department of Licensing (DOL) must stay the suspension of the person's driver's license if he or she notifies DOL of intent to seek a deferred prosecution. This provides time and an incentive for offenders with drinking problems to get into treatment and get there sooner.

HB 3317 from 2006 made a DUI conviction a class C felony if the offender had four or more prior offenses within 10 years or had ever been convicted of vehicular homicide or vehicular assault while under the influence of alcohol or drugs. This gives a DUI offender with four prior misdemeanor DUIs a presumptive sentence range of 22-29 months in prison. The bill also made felony DUI a Category B+ offense under the Juvenile Justice Act, giving a juvenile with zero or one prior adjudication a presumptive disposition range of 15-36 weeks in a state juvenile facility. HB 3317 also categorized felony DUI as a "Crime Against Persons" meaning the offender is only eligible for earned early release up to one-third of his or her sentence (not 50 percent) and community custody

provisions apply, if the offender is not eligible for the first time offender waiver program, DOSA, or work ethic camp. The bill also required the court to order the offender to undergo treatment during incarceration. The offender is liable for the costs of treatment unless the court finds the offender indigent and no third-party insurance is available. Finally, the bill applies the license suspension and ignition interlock provisions currently available under the misdemeanor DUI laws.

E2SHB 3254 from 2008 created an ignition interlock license that allowed persons to drive while their regular license is suspended due to driving under DUI and made deferred prosecution available to first-time offenders who don't need treatment if the offender installed an ignition interlock device on his vehicle. Applicants must pay a fee for an ignition interlock license unless they are determined to be indigent. It also created a program to monitor compliance by ignition interlock users and vendors. It is hoped that the ignition interlock license will hold accountable the large number of people who continue to drive whether they have a license or not. A similar law in New Mexico has resulted in lower re-offender rates.

Issues and Outlook

There were several important DUI bills that failed to make it out of the Legislature in the last two years. One such bill made it a felony to drive or be in physical control of a vehicle while under the influence of intoxicating liquor or any drug when the person has two or more prior offenses within seven years.

House Republicans should continue to pursue legislation enhancing penalties for drunk drivers who harm persons or property. People who kill or injure others or damage property while they are driving intoxicated often receive only minimal fines or short terms of confinement. We should emphasize the loss and grief people must endure from drunk drivers and ensure more appropriate and severe punishments are imposed on those who cause actual harm and suffering than those who do not.

House Republicans should also work to eliminate the intoxication defense. Currently people can get voluntarily intoxicated and commit crimes, then claim they are innocent because they could not have formed the required mental state. Often these cases never even make it to court. The U.S. Supreme Court has held that states can eliminate the intoxication defense. We should emphasize that innocent victims suffer the same harm whether the perpetrator was sober or voluntarily intoxicated with drugs or alcohol.

We should also require standard protocols for all treatment providers to ensure those convicted of DUI offenses don't go to providers just looking for the money, not the safety of the public and the true recovery of the offender.