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IGNITION INTERLOCK DEVICES

House Bill 4210 (Substitute H-6*)
Revised First Analysis (7-1-97)

Sponsor: Rep. Howard Wetters
First House Committee: Transportation
Second House Committee: Judiciary

THE APPARENT PROBLEM:

During the past 15 years, unprecedented attention has been focused on the problem of drinking and driving. In the public sector, much of this effort has been focused on introducing new and tougher laws. In the private sector, organizations such as Mothers Against Drunk Driving (MADD) and Students Against Drunk Driving (SADD) have worked to change public attitudes and behavior. Nonetheless, the problem continues. In fact, according to findings from a study supported by a grant from the U.S. Department of Health and Human Services' National Institute of Alcoholism and Alcohol Abuse and conducted by researchers at the University of Colorado's Institute of Behavioral Science, the effect of legal sanctions (fines and jail time, license suspensions or revocations, and court-ordered alcohol treatment or educational programs) has not been encouraging (Crime and Delinquency, Vol. 38 No. 2, April 1992, pp. 131-157). The reason, according to this and other studies, is that the majority of those arrested for drunk driving are people who cannot control their drinking. Problem drinkers are almost always alcohol impaired when the time comes to decide whether or not to drive, and, at this point, their judgment has deteriorated and they are unlikely to be deterred from driving by the threat of legal sanctions. Accordingly, a large proportion of drunk drivers who have been jailed are repeat offenders.

Michigan's drunk driving laws underwent extensive revision in 1992 that included new, stiffer penalties for repeat offenders. Legal sanctions against drunk driving allow restricted driver's licenses (which, for example, allow the holder to drive to and from work) to be issued under limited circumstances to people convicted of drunk driving offenses (that is, "operating under the influence" [OUIL] or "operating while impaired" [OWI]). If the person has no prior drunk driving convictions, or has only one prior OWI conviction within the previous seven years, a court may, as an alternative to full suspension, order that a restricted license be issued for the person. (A restricted license may not be issued for the first 30 days of the suspension period if the person has no priors, or for the first 60 days, if the person has one prior OWI conviction. The

license of a person who has more than one prior conviction is revoked). In addition, a court may order that a restricted license include a requirement that a person not operate a motor vehicle unless it has been equipped with an ignition interlock device, which is a device that renders a vehicle inoperable if the driver fails to pass a breathalyzer test. Under the code, the device must be calibrated so that the vehicle will not start if the breath alcohol level of the operator reaches a level of 0.02 grams per 210 liters of breath. Since evaluations of this device have demonstrated its value as part of a program to prevent repeat offences among convicted OWI offenders, legislation has been introduced that would mandate the courts and the secretary of state to order the device for repeat offenders.

THE CONTENT OF THE BILL:

The Michigan Vehicle Code allows restricted driver's licenses (which, for example, allow the holder to drive to and from work) to be issued under limited circumstances to people convicted of drunk driving offenses (that is, "operating under the influence" [OUIL] or "operating while impaired" [OWI]). In addition, a court may order that a restricted license include a requirement that a person not operate a motor vehicle unless it has been equipped with an ignition interlock device (IID), which is a device that renders a vehicle inoperable if the driver fails to pass a breath test for alcohol. The bill would amend the code to require ignition interlock devices as a condition of restricted licenses issued following drunk driving convictions other than first-offense OWI. For first offense OWI, the court could, but would not have to, order such devices. Most of the provisions of the bill would expire December 31, 2002.

House Bill 4210 would amend the code to specify that, if a restricted license were issued to a person convicted of a certain crime or misdemeanor involving a drunk driving offense, then a court or a hearing officer would have to order that a functioning IID be installed on that

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person's vehicle. Under the bill, a court would retain the option of requiring that IID be issued for other restricted licenses, except under circumstances where an IID was mandatory. However, an IID would have to be certified by the Department of Transportation, and meet or exceed the model specifications of the National Highway Traffic Safety Administration (57 F.R. p. 11772, April 7, 1992). IIDs would have to be installed on each vehicle owned or operated by the person whose license was restricted, and he or she would have to bear the installed costs. In addition, the bill would specify that, if a conviction included a drunk driving offense, the report of the incident would have to include the lowest blood, breath, or urine alcohol content sample for each arrest, as recorded on an evidential test administered by the Department of State Police, or notice that a chemical test had not been administered.

License Restrictions. Under the bill, a restricted license could be issued for an initial period of six months and could be extended for any length of time after that if the hearing officer chose to do so. The bill would specify that a functioning IID would have to be installed on the vehicles of the following persons, if, at the end of the waiting period specified under the act, a hearing officer had issued a restricted license:

** A person whose license has been denied or revoked because the person is an habitual violator of the criminal laws relating to OWI or OUIL.

** A person whose license has been restricted for any combination of two "operating under the influence" (OUIL) or "operating while impaired" (OWI) convictions within seven years.

** A person whose license has been revoked because the person has had a combination of three convictions within 10 years for violations involving negligent homicide, manslaughter, or murder while operating a vehicle.

In addition, except as otherwise allowed by a court, a functioning IID would have to be installed on the vehicles of a person whose license had been restricted following two arrests within seven years for OWI or OUIL misdemeanor violations; the conviction record contained a breath alcohol content record of 0.20 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine, and the conviction occurred after October 1, 1997. The IID restriction could be ordered for six months or for the duration of the restricted license period.

If a hearing officer or a court issued a restricted license to a person who intended to operate a vehicle owned by his or her employer, then the secretary of state or the court would have to notify the employer of the license

restriction and IID. An employer would not be required to install an IID on the employer-owned vehicle. This provision would not apply to a vehicle operated by a self-employed individual who used it for both business and personal use. These provisions would apply until December 31, 2002.

For persons convicted of driving under these circumstances, a court or hearing officer would be compelled to:

C Require that the IID be set to render the vehicle inoperable if the device detected an alcohol content of .02 grams or more per 210 liters of breath of the person offering a sample.

C Require that the device be set to periodically take samples while the vehicle is in operation, and that it emit a warning signal when the alcohol content of .02 grams or more per 210 liters of breath is detected; and, if it detects an alcohol content of .04 grams or more per 210 liters, render the vehicle inoperable.

C Not issue a restricted license or order the secretary of state to issue one until the secretary verified that an IID had been installed.

C Require periodic monitoring of an IID by the manufacturer or installer.

C Require that, if a monitoring indicated the device had been circumvented, communicate the fact immediately to the court or the hearing officer.

Central File of Licensees. The code requires that the secretary of state maintain a central file that contains certain information, including records of convictions entered against licensees. The bill would require that, in addition, in circumstances involving conviction on a drunk driving offense, or an OUIL or OWI violation while driving a commercial vehicle, the permit report on the person include the lowest blood, breath, or urine alcohol content sample for each arrest, as recorded on an evidential test administered to the person by the Department of State Police (DSP), or a notice that a chemical test had not been administered. This provision would be in effect until December 31, 2002. The results of the test that were included in the person's driving record would be used solely by the University of Michigan Transportation Research Institute while conducting a study to evaluate the effect of the provisions of the bill.

Manufacturers' Certification Requirements. Currently, the Department of Transportation must approve an IID that has been certified by a department-approved laboratory as complying with the National Highway Traffic Safety Administration's model specifications for

breath alcohol ignition interlock devices (BAIID), (57, F.R. p. 11772, April 7, 1992). The department publishes a list of approved certified device manufacturers that have complied with certain requirements. The bill would add to these requirements that, until December 31, 2002, a manufacturer would have to file with the department copies of a bond, evidence of insurance, and an affidavit that the IID meets specific requirements. Further, the bill would specify that a manufacturer could not sell, lease, monitor, or install an IID in a vehicle unless the manufacturer of the device had obtained a \$50,000 executed bond or a renewal certificate for that bond; and carried \$1 million in liability insurance, both of which would have to comply with certain prerequisites.

The bill would also specify that the department could not include a manufacturer on its list of approved certified IID manufacturers unless the manufacturer provided the secretary of state with a list of authorized installers to install and service its IIDs; until December 31, 2002, agreed to have service locations within 50 miles of any location within the state; and until December 31, 2002, agreed to provide an IID without cost to a person whose gross income for the immediately preceding tax year -- based on his or her state income tax return -- was less than 150 percent of the official poverty line, as established in the poverty guidelines issued by the Secretary of Health and Human Services under authority of the Community Services Block Grant Act. However, the owner of the vehicle would have to pay a maintenance fee of \$1 per day to the installer.

U of M Evaluation. The secretary of state would enter into a contract with the University of Michigan Transportation Research Institute to have the institute evaluate the effect and impact of the provisions of the bill. Findings would have to be reported to the governor and the legislature by December 31, 1999. Circuit, district, probate, and municipal courts and local units of government would cooperate with the secretary of state to provide the necessary information to prepare the report.

Other. The bill includes other provisions, as follows:

** The bill would specify that the state, or the department and its officers, employees, or agents, would not be liable for any claim or action that might arise due to an IID manufacturer, installer, or servicing agent that resulted in personal or property damage.

** Currently, under the code, a restricted license permits the person to whom it is issued to drive under certain circumstances, including to and from the person's residence and work. The bill would extend this provision to include driving to and from a person's

residence and the site where an IID was to be monitored.

** Until December 31, 2002, an accident report form filed according to the provisions of the act would have to include, when applicable, information signifying whether an IID had been installed in a vehicle involved in an accident.

** An IID would have to be serviced at intervals not to exceed 67 days, including inspection of the device and the vehicle for tampering; otherwise, the installer would have to report noncompliance to the appropriate court personnel.

** Only authorized employees of the manufacturer or the department could observe the installation of a device; and reasonable security measures would have to be taken to prevent the customer from observing the installation or obtaining access to installation materials.

MCL 247.204a et al.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would result in increased costs to the Department of State in order to contract with the University of Michigan Transportation Research Institute, as required by the bill. The cost of the contract cannot be determined at this time. (6-4-97)

ARGUMENTS:

For:
Recent studies have shown that a large proportion of drinking drivers who have been jailed are repeat offenders, many of whom have serious alcohol abuse problems. The results of a recent study published by the Traffic Injury Research Foundation demonstrate that drivers with the greatest risk of being involved in fatal crashes are those who have high blood alcohol concentrations (BACs). In fact, according to the study, virtually all fatally injured drivers with BACs over .15 are at least partly responsible for the collision, and surviving drivers with high BACs are also usually responsible for the collision. Other conclusions reached in the study are: high-BAC drivers are more likely than other groups of drivers to have a history of previous OWI convictions and license suspensions; the higher incidence of previous license suspensions and lack of a valid license at the time of the fatal crash among fatally injured drivers with high BACs is a result of convictions for OWI, which is further evidence of drinking problems.

In another recent study, designed to determine the impact and effectiveness of Michigan's new drunk and impaired driving laws that took effect in January of 1992 ("An Evaluation of the Impact and Effectiveness of Michigan's Drunk and Impaired Driving Laws," December, 1994) the University of Michigan Transportation Research Institute concluded that, while the state's courts are implementing the laws and sanctions as intended, and the laws appear to have reduced alcohol-involved traffic fatalities by between nine and twenty-five percent, the laws appear to be having little influence on repeat alcohol-offenders. Among other things, the study concluded that, with regard to repeat alcohol-offenders, about one-third were driving on a nonvalid license; about one-quarter of the defendants were involved in at least a minor crash prior to their arrest; about 60 percent of the defendants had blood alcohol levels between .10 and .20 percent; and in about 18 percent of the arrests, open containers of alcohol were found in the vehicle.

Legal sanctions involving license suspension, fines, or even jail do not appear to affect this segment of the population. Even after conviction, many continue to drink and drive. In fact, many drive without licenses or insurance. In dealing with these "hard core" drunk drivers, ignition interlock devices have proven to be an effective strategy. Interlocks require that a driver provide a breath sample every time he or she attempts to start the vehicle in which it is installed. If the driver has a BAC above a specified low threshold value, the ignition is locked and the vehicle cannot be started, thereby preventing the drinker from driving. Evidence from several studies -- both in this country and in Canada -- has shown a considerably lower rate of reconviction for OWI conviction among offenders with interlocks installed than among offenders without interlocks. Studies conducted in four pilot counties in California to review results of using the devices, for example, indicate a recidivism reduction of approximately 29 percent. In San Diego County alone, the reduction was greater than 61 percent.

For:

A report on ignition interlock devices and their role in preventing impaired driving, issued by the Traffic Injury Research Foundation of Canada in July, 1991, concluded that nearly one-half of all driving fatalities in that country involved drinking. According to the report, the problem is due, to a large extent, to one particular high-risk group of drivers -- convicted impaired driving offenders who continue to drink and drive. Citing evaluations of ignition interlock device programs implemented in the U.S., the report listed the following among the benefits of the interlock devices: the incidence of recidivism is lower among offenders with interlock devices installed in their vehicles; the instrument serves as a constant reminder to drivers of

their drinking problems and the difficulties that have arisen from them; having an interlock device installed allows the driver to reenter the driver licensing system legally, with insurance, and sober; interlocks allow more offenders the opportunity to maintain employment; regular maintenance of the device facilitates the monitoring of offenders, and provides checks on attempts to circumvent the device; and interlocks can serve as an adjunct to treatment for alcohol abuse by preventing impaired driving in case of relapse.

For:

Installing ignition interlock devices on the vehicles of persons convicted of drunk driving would serve as a form of probation and would be an effective tool in reducing the number of repeat offenders. The use of IIDs would also serve as an alternative to jail or substance abuse treatment. Although treatment does serve to keep offenders off the roads for a period of time, it is an expensive form of deterrence; IIDs, on the other hand, monitor drunk drivers without the expenses incurred in incarceration or the costs of constitutional challenges inherent in other proposals.

POSITIONS:

The Michigan Licensed Beverage Association supports the bill. (6-4-97)

The Michigan Judges Association has no position on the bill. (6-4-97)

Analyst: R. Young

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their deliberations, and does not constitute an official statement of legislative intent.