

Legislative Analysis



DWI/SOBRIETY COURT INTERLOCK PILOT PROJECT

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House Bill 5273 as enrolled
Public Act 154 of 2010
Sponsor: Rep. Marc Corriveau

Senate Bill 795 as enrolled
Public Act 155 of 2010
Sponsor: Sen. Patricia L. Birkholz

House Committee: Judiciary
Senate Committee: Judiciary

First Analysis (2-8-11)

BRIEF SUMMARY: The bills amended separate acts to create a three-year pilot project that would enable a person whose driver's license is suspended or revoked/denied for multiple convictions of operating a vehicle while intoxicated or visibly impaired to receive a restricted license if certain conditions are met, such as admittance into a sobriety court program and installation of an ignition interlock device on each vehicle the driver owned or operated.

FISCAL IMPACT: The bills would have an indeterminate fiscal impact on the judiciary and the secretary of state as discussed later in the analysis. See *Fiscal Information*.

THE APPARENT PROBLEM:

Under provisions of the Michigan Vehicle Code, the secretary of state is required to suspend or revoke a driver's license for various traffic violations, including drunk driving. In addition, a person convicted of drunk driving faces sanctions that may include incarceration, community service, fines, restitution, and treatment for substance abuse.

In recent years, there has been a national trend to establish DWI or Sobriety Courts as a way to reduce recidivism for persons convicted of drunk driving. Similar to drug courts, Sobriety Courts typically involve misdemeanor cases and provide offenders with extensive supervision and treatment programs. DWI courts follow the 10 Key Components of Drug Courts and the Guiding Principles of DWI Courts as established by the National Center for DWI Courts (NCDC). The principles include performing a clinical assessment to determine the offender's needs, development of a treatment plan, increased supervision and court monitoring, program evaluation, and ensuring a sustainable program. It is believed that treating a drunk driver's underlying substance abuse addiction reduces the risk of that person driving drunk again. Michigan has at least 23 such courts.

It has been suggested that one way to encourage greater participation in DWI courts and discourage driving without a license by repeat offenders is to offer them a restricted

license that would enable them to continue to drive to and from home, work, school, or alcohol or drug education or treatment program. Legislation that created a pilot project combining participation in a DWI court with installation of an ignition interlock device as a means to obtain a restricted license was enacted last year and took effect on January 1, 2011.

THE CONTENT OF THE BILLS:

House Bill 5273 amended the Revised Judicature Act to create the DWI/Sobriety Interlock Pilot Project, establish placement criteria, require annual reports on program participants' compliance, and require a DWI/Sobriety Court judge to notify the secretary of state of certain conduct by a program participant. Senate Bill 795 amended the Michigan Vehicle Code to require the secretary of state to issue a restricted license under the DWI/Sobriety Court Pilot Project to a person meeting eligibility criteria, such as admittance to a DWI/Sobriety Court program and installation of an interlock ignition device; defray payment of driver responsibility fees until program completion; exempt a participant's vehicle from immobilization or forfeiture; and redefine the term "start-up test failure" in regards to an ignition interlock device installed for persons convicted of a high BAC drunk driving offense.

The legislation took effect January 1, 2011.

House Bill 5273

The bill added a new section to the Revised Judicature Act (MCL 600.1084) to create a DWI/Sobriety Court Interlock Pilot Project, beginning on January 1, 2011, and continuing for three years. Participating DWI/Sobriety Courts would have to comply with the 10 Guiding Principles of DWI Courts as promulgated by the National Association of Drug Court Professionals.

Persons considered for placement in the pilot project would be those convicted of two or more violations of Section 625(1) or (3) of the Michigan Vehicle Code [operating while intoxicated (OWI) or while visibly impaired (OWVI), respectively] or one conviction for an OWI or OWVI and one or more preceding convictions for a substantially similar ordinance or law of another state or the US. The bill also would:

- Require participating DWI/Sobriety Courts to – in cooperation with the State Court Administrative Office (SCAO) – annually provide documentation to the Legislature, secretary of state (SOS), and the state supreme court regarding compliance by participants with court-ordered conditions. The documentation must provide, among other things, the percentage of participants ordered to place an interlock device on their vehicles; the percentage who removed those devices without court approval; the percentage who tampered with the devices or operated a vehicle without a device; and the percentage convicted of a new OWI or OWVI offense.
- Prior to SOS granting a restricted license under provisions of Senate Bill 795, require the DWI/Sobriety Court judge to certify that the person is a participant in the DWI/Sobriety Court and had an interlock ignition device installed on each vehicle he or she owns or operates.

- Require the judge to immediately inform the SOS if a participant is terminated from the program, operated a vehicle without a device installed, or was charged with a new OWI or OWVI violation and require the SOS to revoke or suspend the restricted license, as applicable.

"DWI/Sobriety Courts" would mean the specialized court programs established within judicial circuits and districts throughout the state that are designed to reduce recidivism among alcohol offenders and that comply with the 10 Guiding Principles of DWI Courts as promulgated by the National Association of Drug Court Professionals.

Senate Bill 795

The bill amended the Michigan Vehicle Code (257.219 et al.) to, among other things, require the SOS to issue a restricted license to a person whose license was suspended or restricted under Section 319 or revoked or denied under Section 303 based on two or more convictions of operating a vehicle while intoxicated (OWI) or while visibly impaired (OWVI) or one OWI or OWVI and one or more preceding convictions for a substantially similar drunk driving law or ordinance of another state or the US. This restricted license is only available to individuals arrested for a drunk driving offense on or after January 1, 2011.

A restricted license could not be issued under the bill's provisions until after the person's license had been suspended or revoked for 45 days and a judge assigned to a DWI/Sobriety Court had certified to the SOS that the driver had been admitted into a DWI/Sobriety Court program and an ignition interlock device as provided for in the code had been installed on each motor vehicle the driver owned or operated. The bill also does all of the following:

- Prohibit the issuance of a restricted license if the person is otherwise ineligible for a driver license, unless the ineligibility is based on certain violations.
- Allow a person with a restricted license issued under the bill to operate only a vehicle equipped with an ignition interlock device; to take any required driving skills test; and to drive to and from any combination of the person's residence, workplace, school, or a court-ordered alcohol or drug education or treatment program.
- Specify that a restricted license issued under the bill is effective until a hearing officer orders an unrestricted license.
- Prohibit a person issued a restricted license under the bill from being considered for an unrestricted license until the court notifies the SOS that the person has successfully completed the DWI/Sobriety Court program or the minimum period of license sanction that could have otherwise been imposed has been completed, whichever is later.
- Require the SOS to summarily impose license sanctions as specified in the bill if notified by the DWI/Sobriety Court under the provisions of House Bill 5273 that a program participant has been terminated from the program or has committed certain violations.
- After a person completes the DWI/Sobriety Court Interlock Pilot Program, require a restricted license issued under the bill to be suspended, revoked, or denied for

certain violations (e.g., subsequent drunk driving violations or driving a vehicle without an ignition interlock device).

- Require that all driver responsibility fees required to be assessed by the SOS for the conviction or convictions that led to a restricted license under the bill be held in abeyance during the time the person has a restricted license and is participating in the DWI/Sobriety Court Interlock Pilot Project. Fees would be assessed at the end of the person's participation in the program and paid under the payment schedule described in the code.
- Exempt a program participant's vehicle from immobilization or forfeiture requirements if he or she remains in good standing with the DWI/Sobriety Court Interlock Pilot Project or successfully completes the program, and does not subsequently violate a Michigan law for which vehicle immobilization or forfeiture is a sanction.
- Amend numerous provisions amended by Public Act 463 of 2008 to clarify that those provisions take effect October 31, 2010.

In addition, the bill amended provisions pertaining to restricted licenses issued to persons whose licenses were suspended for a high BAC offense (0.17g or higher). Currently, the SOS must suspend a person's license for a year if he or she had no prior convictions within seven years or not more than two convictions within 10 years. However, the code allows (as opposed to requiring) the SOS to issue a restricted license after a 45-day suspension that permits the person to operate only a vehicle equipped with an ignition interlock device. The device may be removed after the interlock device provider provides the SOS with verification that the person operated the vehicle with no instances of reaching or exceeding a blood alcohol level of 0.025 grams.

The bill added additional instances under which it would not be prohibited to remove the device, including, but not limited to, a start-up test failure occurring within the first two months (defined to mean the ignition interlock device prevented the vehicle from being started), or more than two months after installation of the device if not more than 15 minutes after detecting the start-up test failure, the person delivers a breath sample that the device analyzes as having an alcohol level of less than 0.025 grams.

Further, the SOS is required to extend the period of suspension for a restricted license issued for a high BAC offense if the person violates the conditions of the restricted license or attempts to operate a vehicle with a blood alcohol level of 0.025 grams. The bill would apply the same exceptions described above in this instance also.

FISCAL INFORMATION:

House Bill 5273 would have an indeterminate fiscal impact on the Judiciary. There would likely be increased administrative costs associated with more individuals participating in a DWI/Sobriety Court program. Costs would come from processing and monitoring participants. Moreover, local courts would be required to produce documentation (i.e. data reports) on the court's participants, which would also increase administrative costs for the local courts. However, it is unknown what percentage of those cost increases would be offset by fees and costs charged to program participants.

The secretary of state may realize negligible costs associated with processing restricted licenses for participants.

Senate Bill 795 would have an indeterminate fiscal impact on the Department of State. Any fiscal impact would be the result of administration, tracking individuals, and ensuring compliance with program requirements. The number of people that would participate in the pilot project is unknown. Moreover, while the driver responsibility fees would be held in abeyance, the state would still receive payment upon completion of the program. The bill would also exempt a participant's vehicle from forfeiture requirements if the participant remained in good standing with the sobriety court, completed the program, and did not violate further laws for which forfeiture is a penalty. Although local governments receive revenue from forfeitures, the impact to the locals under the provisions of the bill is indeterminate and likely negligible.

ARGUMENTS:

For:

Most of the serious injuries and deaths associated with drunk driving incidents are caused by offenders who have multiple drunk driving-related convictions, many of whom were driving on suspended or revoked licenses. Studies show that installation of an ignition interlock device can be an effective deterrent.

Ignition interlock devices prevent a vehicle from starting if the operator has a blood alcohol content (BAC) greater than 0.025 grams and are an effective measure to reduce repeat drunken driving incidents. Because studies support the contention that ignition interlock devices significantly reduce traffic fatalities caused by repeat offenders (by some estimates, up to a 75 percent reduction in subsequent DWI arrests), over 40 states have adopted legislation to increase the use of the devices. In Michigan, despite the research, judges do not order the devices in all situations they could. Of those offenders ordered to install an ignition interlock device, only about 20 percent comply.

Similarly, DWI/Sobriety Courts, by treating the underlying substance abuse problem, also are decreasing the numbers of drunk drivers who reoffend. In testimony presented to the House Judiciary Committee by the Century Council, a not-for-profit organization funded by the nation's leading distillers of spirits, a Michigan study that looked at three DWI courts found that "DWI court offenders were 19 times less likely to be re-arrested than a DWI offender in a traditional court."

The bills would address this problem of repeat drunk driving by creating a DWI/Sobriety Court Interlock Pilot Project under which participants would not only get appropriate treatment for their alcohol addiction, but also could receive a restricted license earlier (45 days instead of one year for two DWIs in seven years or three in ten years, in general) by installing an ignition interlock device on each car they own or drive and complying with all of the bills' requirements. The rationale behind the bills is simple – unless the underlying addiction is successfully treated, drunk drivers continue to drive while under the influence, regardless of whether or not they have a valid driver's license. Sobriety courts treat alcohol addiction through appropriate therapies and close judicial supervision. Allowing participants to receive a restricted license will provide an incentive for participation in and compliance with the pilot program and enable participants to get to court, therapy appointments, and work or school – all of which are

also known to positively impact sobriety and reduce recidivism. At the end of the three-year pilot program, the DWI/Sobriety Court Pilot Project could be expanded statewide if the data supports that the program is working to increase the public's safety.

According to information provided by the State Court Administrative Office, SCAO will determine which DWI/Sobriety Court programs meet the eligibility criteria in House Bill 5273. Participant eligibility will be determined by the secretary of state (SOS). Both agencies are developing separate FAQ documents that will provide guidance to courts on how to participate in the DWI/Sobriety Court Interlock Pilot Project. SCAO has created a form that courts are required to submit to the SOS regarding participant eligibility and to inform SOS of a participant's entrance into or termination from a DWI/Sobriety Court program (Form MC 393).

Against:

Three years may be too short of a time frame to gauge whether the DWI/Sobriety Court Interlock Pilot Project is a success. Entrance into the pilot project is restricted to repeat drunk drivers who lost their licenses for an arrest that occurred after January 1, 2011. However, it can take months to a year or more to adjudicate a drunk driving charge. Thus, the pilot project could expire before a sufficient number of persons arrested after that date who meet the eligibility criteria could be enrolled and the results tracked.

Moreover, as of October 31, 2010, Section 319 of the vehicle code allows the SOS to issue a restricted license after a 45-day hard suspension to drivers with two convictions within ten years of driving with a high BAC of 0.17 grams or more (drivers with one conviction in seven years may also qualify). Offenders must install an ignition interlock device on any vehicle they drive and repeat offenders have to receive substance abuse treatment, but are not required to participate in a DWI/Sobriety Court program with its more stringent oversight. In addition, a restricted license available under this provision allows a person to drive to more places than the restricted license available to participants in the DWI/Sobriety Court Interlock Pilot Project; for instance, the court probation department, a court-ordered community service program, certain medical appointments, and even in the course of their employment or occupation if the vehicle is fitted with an ignition interlock device. Thus, there is less enticement for repeat superdrunks, who arguably are the offenders that the pilot project could benefit the most, to seek a restricted license under the new Section 304 if they can get a restricted license with fewer hoops to jump through under Section 319.

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