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BILL ANALYSIS

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Senate Bill 795 (as enacted)
House Bill 5273 (as enacted)
Sponsor: Senator Alan L. Cropsy (S.B. 794)
Representative Ellen Cogen Lipton (H.B. 5274)
Senate Committee: Judiciary
House Committee: Judiciary

PUBLIC ACT 155 of 2010
PUBLIC ACT 154 of 2010

Date Completed: 2-24-11

CONTENT

House Bill 5273 amended the Revised Judicature Act to do the following:

- Create a three-year DWI/sobriety court interlock pilot project for individuals convicted of two or more violations of operating a vehicle while intoxicated or impaired.
- Require a DWI/sobriety court judge to certify a person's admission to the program to the Secretary of State (SOS).
- Require a DWI/sobriety court judge to inform the SOS if a participant is removed from the program or commits certain violations.
- Require the SOS to suspend or revoke a restricted license if he or she receives notification from the court.
- Require DWI/sobriety courts participating in the pilot project to report annually to the Legislature, the SOS, and the Supreme Court.

- Specify that the restricted license allows the person to operate only a vehicle equipped with an ignition interlock device.
- Require the SOS to hold in abeyance all driver responsibility fees while a DWI/sobriety court program participant has a restricted license.
- Exempt a program participant's vehicle from immobilization or forfeiture if the person is in good standing with or satisfactorily completes the DWI/sobriety court pilot program, and does not commit subsequent violations subject to immobilization or forfeiture.

The bill also revised provisions concerning ignition interlock devices installed on vehicles of individuals convicted of a so-called super drunk violation.

House Bill 5273 took effect on September 2, 2010, and Senate Bill 795 took effect on January 1, 2011. The bills were tie-barred.

Senate Bill 795 amended the Michigan Vehicle Code to do the following:

- Require the Secretary of State to issue a restricted license to an individual who is in a DWI/sobriety court program, after a 45-day suspension or revocation, if an interlock device has been placed on each of his or her vehicles.
- Specify that the restricted license allows travel only to and from a driving skills test, work, school, or alcohol or drug treatment program.

House Bill 5273 defines "DWI/sobriety courts" as the specialized court programs established within judicial circuits and districts throughout Michigan 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 Center for DWI Courts; Senate Bill 795 refers to this definition in the Vehicle Code. (The 10 guiding principles are described in **BACKGROUND**, below.)

House Bill 5273

Pilot Project

The bill creates a DWI/sobriety court interlock pilot project using the DWI/sobriety courts in Michigan and in accordance with Chapter 10A (Drug Treatment Courts) of the Revised Judicature Act. The pilot project had to begin on January 1, 2011, and must continue for three years. All DWI/sobriety courts that participate in the pilot project must comply with the 10 guiding principles of DWI courts.

To be considered for placement in the DWI/sobriety court program, an individual must have been convicted of either of the following:

- Two or more violations of the Michigan Vehicle Code for operating a vehicle while intoxicated or operating a vehicle while visibly impaired due to the consumption of alcohol and/or a controlled substance, or a substantially corresponding local ordinance.
- One such violation preceded by one or more convictions for violating a local ordinance, law of another state, or law of the United States substantially corresponding either to those Vehicle Code offenses or operation of a vehicle by a person under 21 who has any bodily alcohol content.

Before the Secretary of State issues a restricted license to a program participant, the DWI/sobriety court judge must certify to the SOS that the person seeking the restricted license has been admitted into the DWI/sobriety court program and that an interlock device has been placed on each motor vehicle owned or operated by that person.

If any of the following occurred, the DWI/sobriety court judge must immediately inform the Secretary of State:

- The court orders a program participant to be removed from the DWI/sobriety court program before he or she successfully completes it.
- The court becomes aware that a program participant operates a motor vehicle that is not equipped with an interlock device, or tampers with, circumvents, or removes a court-ordered

interlock device without prior court approval.

- A program participant is charged with a new drunk driving violation.

If the SOS receives notice of one of those occurrences, the person's restricted license must be summarily revoked or suspended.

DWI/Sobriety Court Report

The bill requires all DWI/sobriety courts that participate in the pilot project, in cooperation with the State Court Administrative Office, each year to give the Legislature, the Secretary of State, and the Supreme Court documentation of program participants' compliance with court-ordered conditions. The topics documented must include all of the following:

- The percentage of program participants ordered to place interlock devices on their vehicles who actually comply with the order.
- The percentage of participants who remove court-ordered interlocks from their vehicles without court approval.
- The percentage of participants who consume alcohol or controlled substances.
- The percentage of participants found to have tampered with court-ordered interlocks.
- The percentage of participants who operated a motor vehicle not equipped with an interlock.
- Relevant treatment information regarding program participants.
- The percentage of participants convicted of a new offense for operating while intoxicated or impaired.
- Any other information found to be relevant.

Best practices available must be used in the research in question, as resources allow, to provide statistically reliable data regarding the impact of the pilot project on public safety and the improvement of life conditions for program participants.

Senate Bill 795

Restricted License

The bill makes exceptions to provisions of Michigan Vehicle Code that prohibit the Secretary of State from issuing a license or

registration to a person whose license has been suspended, revoked, or denied. Under the bill, those provisions apply except as provided under Section 304, which the bill added to the Code. Section 304 applies only to individuals arrested for a violation of Section 625 (operating while impaired or under the influence) on or after the bill's effective date.

Under Section 304, the SOS must issue a restricted license to a person whose license was suspended or restricted, or revoked or denied, based on either of the following:

- Two or more convictions for operating while intoxicated or impaired or violating a substantially corresponding local ordinance.
- One such violation preceded by one or more convictions for violating a local ordinance, law of another state, or law of the United States substantially corresponding either to those Vehicle Code offenses or operation of a vehicle by a person under 21 who has any bodily alcohol content.

A restricted license may not be issued until after the person's driver license has been suspended or revoked for 45 days and the judge assigned to a DWI/sobriety court certifies to the Secretary of State that both of the following have been met:

- The individual has been admitted into a DWI/sobriety court program.
- An ignition interlock device approved, certified, and installed as required by the Code has been installed on each motor vehicle the person owns and/or operates.

A restricted license may not be issued if the person is otherwise ineligible for a driver license, unless his or her ineligibility is based on a specified section of the Vehicle Code, the Michigan Penal Code, or another statute that requires the SOS to suspend, revoke, or deny a driver license for various violations. These include the following:

- Failure to answer a citation or notice to appear, or failure to comply with a court order or judgment, for a violation involving the operation of a vehicle, off-road vehicle, or snowmobile.
- The purchase, consumption, or possession of liquor by a minor.

- Driving with an open container.
- A controlled substance violation.
- Prohibited conduct involving a fake or void driver license.
- Joyriding.
- Commercial vehicle drunk driving.
- Being charged with 12 or more points within two years.
- Refusal to submit to a chemical test.
- Failure to pay a driver responsibility fee.
- Failure to pay a snowmobile registration fee.
- Failure to pay personal protection insurance and benefits by the owner of an uninsured vehicle.
- Failure to repay an SOS payment from the Motor Vehicle Accident Claims Fund.
- Various combinations of repeat offenses involving reckless driving, a felony in which a motor vehicle was used, a moving violation in a work zone or school zone, failure to stop at the scene of an accident, operating without a license and causing serious injury or death, or driving while impaired or under the influence.

A restricted license permits the person to operate only the vehicle equipped with an ignition interlock device, to take any driving skills test required by the SOS, and to drive to and from any combination of the following locations: the person's residence, workplace, or school, or court-ordered alcohol or drug education or treatment program.

Except as otherwise provided, a restricted license is effective until a hearing officer orders an unrestricted license under the Code. The person may not be considered for an unrestricted license until the later of the following occurs:

- The court notifies the SOS that the person has successfully completed the DWI/sobriety court program.
- The minimum period of license sanction that otherwise would have been imposed under the Code has been completed.

If the Secretary of State receives notification from the DWI/sobriety court that the court has ordered a participant to be removed from the pilot program, or that the court is aware that a participant operated a motor vehicle not equipped with an interlock device or tampered with, circumvented, or removed an interlock device, the SOS must summarily impose a suspension or

revocation and denial, as applicable, for the full length of time provided under the Code. If a license is suspended, a restricted license may not be issued as provided under Section 319(8) (which requires the Secretary of State to suspend a license for drunk driving convictions and authorizes the SOS to issue a restricted license during a suspension period). If a revocation and denial are imposed, the minimum period must be the same as if Section 304 did not apply. These provisions apply if the underlying conviction or convictions would have otherwise subjected the person to a license sanction under Section 319(8) or caused a license revocation and denial.

After the person completes the DWI/sobriety court program, the restricted license must be suspended or revoked or denied, unless set aside, if any of the following occurs:

- The person operates a motor vehicle without an ignition interlock device that meets the prescribed criteria.
- The person removes, or causes to be removed, an ignition interlock device from a vehicle he or she owns or operates unless the SOS has authorized its removal.
- The person is arrested for operating under the influence or while impaired.

Also, after the person completes the program, if he or she is convicted of or found responsible for any offense that requires the suspension, revocation, denial, or cancellation of the person's driver license, the restricted license must be suspended until the requisite period of suspension, revocation, denial, or cancellation has elapsed.

In addition, if the person has failed to pay any court-ordered fines or costs that resulted from the operation of a vehicle, after completing the program, the restricted license must be suspended pending payment of those fines and costs.

All driver responsibility fees required to be assessed by the Secretary of State under the Code must be held in abeyance while the participant has a restricted license and is participating in the DWI/sobriety court pilot project. At the end of the person's participation, the driver responsibility fees must be assessed and paid pursuant to the payment schedule in the Code.

If an individual is in good standing with the DWI/sobriety court pilot program or satisfactorily completes the program, and does not subsequently violate a State law for which vehicle immobilization or forfeiture is a sanction, his or her vehicle that otherwise would be subject to immobilization or forfeiture under the Code is exempt from both of those sanctions.

Ignition Interlock Device – Super Drunk

Under the Code, if a person is convicted of violating Section 625(1)(c) (sometimes referred to as Michigan's super drunk law), the Department of State must order the person not to operate a motor vehicle under a restricted license unless the vehicle is equipped with an ignition interlock device. The ignition interlock device may be removed after device provider gives the Department verification that the person has operated the vehicle with no instances of having a blood alcohol level of 0.025 gram per 210 liters of breath or more. (Under Section 625(1)(c), a person is under the influence if he or she has an alcohol content of 0.17 gram or more per 100 milliliters of blood, 210 liters of breath, or 67 milliliters of urine.)

Under the bill, these provisions do not prohibit the removal of the ignition interlock device for any of the following:

- A start-up test failure that occurs within the first two months after installation of the device.
- A start-up test failure occurring more than two months after installation, if within 15 minutes after the failure the person provides a breath sample showing an alcohol level of less than 0.025 gram per 210 liters of breath.
- A retest prompted by the device, if within five minutes after detecting the start-up test failure the person provides a breath sample showing an alcohol level of less than 0.025 gram per 210 liters of breath.

If the individual violates the conditions of the restricted license or operates or attempts to operate a vehicle with a blood alcohol level of 0.025 gram per 210 liters of breath, the Code requires the SOS to impose an additional period of suspension and restriction. This does not apply, however, in the event of a start-up test failure within the

first two months after the device was installed. Under the bill, an additional period of suspension and restriction also is not required for a start-up test failure more than two months after installation or for a retest, under the circumstances described above.

MCL 257.219 et al. (S.B. 795)
600.1084 (H.B. 5273)

BACKGROUND

According to the National Center for DWI Courts website (www.dwicourts.org), the 10 Guiding Principles of DWI Courts are as follows:

- #1: Determine the Population
- #2: Perform a Clinical Assessment
- #3: Develop the Treatment Plan
- #4: Supervise the Offender
- #5: Forge Agency, Organization, and Community Partnerships
- #6: Take a Judicial Leadership Role
- #7: Develop Case Management Strategies
- #8: Address Transportation Issues
- #9: Evaluate the Program
- #10: Ensure a Sustainable Program

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

House Bill 5273

There are currently 90 Drug Treatment Courts in Michigan, 25 of which are DWI/Sobriety Courts. The Michigan Drug Court program is administered by the State Court Administrative Office (SCAO) and provides funding to 15 of the 25 DWI Courts. A total of \$395,500 was awarded to DWI Courts in FY 2010-11. In addition, \$500,000 was awarded to 9 DWI Courts through the Office of Highway Safety Planning Grant Program, also administered by the SCAO.

The State Court Administrative Office stated that it will incur programming costs of approximately \$10,000.

Senate Bill 795

The Department of State indicated there will be some costs associated with programming, manual tracking of people in the pilot project, and review of compliance

with the requirements associated with interlock devices. The amount of these costs is indeterminate but dependent on the number of participants who enroll in the pilot project. In addition, the Department does not track the number of multiple-time offenders; thus, it is unknown how much of the driver responsibility fees will be held in abeyance as prescribed by the bill.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.