
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: SB 1046 **Hearing Date:** March 29, 2016
Author: Hill
Version: March 17, 2016
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Driving Under the Influence: Ignition Interlock Device*

HISTORY

Source: Author

Prior Legislation: SB 61 (Hill) - Chaptered 350, Stats. 2015
SB 55 (Hill) - held in Assembly Appropriations (2013)
AB 520 (Ammiano) - Chapter 657, Stats. 2011
SB 598 (Huff) - Chapter 193, Stats. 2009
AB 91 (Feuer) - Chapter 217, Stats. 2009
SB 1190 (Oropeza) - Chapter 392, Stats. 2008
SB 1361 (Correa) - Vetoed (2008)
SB 1388 (Torlakson) - Chapter 404, Stats. 2008
AB 2784 (Feuer) - until August 28, 2008 version
SB 177 (Migden) - did not move (2007)
AB 4 (Bogh) - held in Assembly Appropriations (2005)
AB 979 (Runner) - Chapter 646, Stats. of 2005
AB 638 (Longville) - prior to 7/2/2003 amends
died on Concurrence (2003)
AB 1026 (Levine) - failed Senate Public Safety (2003)
AB 762 (Torlakson) - Chapter 756, Stats. of 1998

Support: Advocates for Highway and Auto Safety; Alcohol Justice; Association of Orange County Deputy Sheriffs; California Statewide Law Enforcement Association; Crime Victims United California; Fraternal Order of Police; Long Beach Police Officers Association; Los Angeles City Attorney; Mothers Against Drunk Driving; Peace Officers Research Association of California; Sacramento County Deputy Sheriffs' Association; San Marcos Prevention Coalition

Opposition: California Attorneys for Criminal Justice; California Public Defenders Association

PURPOSE

The purpose of this bill is to require a DUI offender to install an ignition interlock device (IID) on his or her vehicle for a specified period of time in order to get a restricted license or to reinstate his or her license and to remove the required suspension time before a person can get a restricted license.

Existing law provides it is unlawful for any person who is under the influence of any alcoholic beverage or drug, or under the combined influence of any alcoholic beverage and drug, to drive a vehicle. (Vehicle Code § 23152(a).)

Existing law provides that it is unlawful for any person, while having 0.08 percent or more, by weight, of alcohol in his or her blood to drive a vehicle. (Vehicle Code § 23152(b).)

Existing law provides that a person who is convicted of a first DUI is subject to the following penalties when given probation:

- possible 48 hours to 6 months in jail;
- \$390 to \$1,000 fine plus 250% penalty assessments;
- completion of a 3-month treatment program or a 9-month program if the BAC was .20% or more;
- 6 month license suspension or 10 month suspension if 9-month program is ordered; and
- Restricted license may be sought upon proof of enrollment or completion of program, proof of financial responsibility and payment of fees. However, the court may disallow the restricted license. (Vehicle Code §§ 13352 (a)(1); 13352.1; 13352.4; 23538(a)(3).)

Existing law provides that a person who is convicted of a first DUI with injury is subject to the following penalties:

- 16 months, 2 or 3 years in state prison or 90 days to 1 year in county jail;
- \$390 to \$1,000 fine plus 250% penalty assessments; and
- 1 year driver's license suspension.

Or, when probation is given:

- 5 days to one year in jail;
- \$390 to \$1,000 fine plus 250% penalty assessments;
- 1 year license suspension;
- 3 month treatment program or a 9-month program if the BAC was .20% or more; and
- the additional penalties that apply to a first DUI without injury. (Vehicle Code § 23554.)

Existing law provides that the Department of Motor Vehicles shall advise the person convicted of a second DUI that after completion of 12 months of the suspension period, the person may apply for a restricted license subject to the following conditions:

- Proof of enrollment in an 18 month or 30 month driving-under- the influence program.
- The person agrees to continued satisfactory participation in the program.
- The person submits proof of installation of an ignition interlock device.
- The person provides proof of insurance.
- The person pays all fees. (Vehicle Code § 13352 (a)(3).)

Existing law provides that the Department of Motor Vehicles shall advise the person convicted of a third DUI that after completion of 12 months of the suspension period, the person may apply for a restricted license subject to the following conditions:

- Proof of enrollment in an 18 month or 30 month driving-under-the influence program.
- The person agrees to continued satisfactory participation in the program.
- The person submits proof of installation of an ignition interlock device.
- The person provides proof of insurance.
- The person pays all fees. (Vehicle Code § 13352 (a)(5).)

Existing law provides that if a first-offender DUI is found to have a blood concentration of .20% BAC or above or who refused to take a chemical test, the court shall refer the offender to participate in a 9-month licensed program. (Vehicle Code § 23538 (b)(2).)

Existing law provides that a first-time DUI offender sentenced to a 9-month program because of a high BAC or a refusal shall have their license suspended for 10 months. The law further provides that their license may not be reinstated until the person gives proof of insurance and proof of completion of the required program. (Vehicle Code § 13352.1.)

Existing law provides that a person convicted of a first-time DUI may apply for a restricted license for driving to and from work and to and from a driver-under-influence program if specified requirements are met, paying all applicable fees, submitting proof of insurance and proof of participation in a program. (Vehicle Code § 13352.4.)

Existing law provides that a second or subsequent DUI offender can get his or her license reinstated earlier if he or she agrees to install an Ignition Interlock Device (IID) along with his or her enrollment in the required program, proof of insurance and payment of specified fees. (Vehicle Code §§ 13352(a)(3)(B); (a)(4) (B); (a)(5)(C); (a)(6)(B); (a)(7)(B)&(C))

Existing law creates an IID pilot project in Alameda, Los Angeles, Sacramento and Tulare Counties requiring a person convicted of a DUI to install an IID for 5 months upon a first offense, 12 months for a second offense, 24 months for a 3rd offense and for 36 months for a 4th or subsequent offense. (Vehicle Code § 23700)

Existing law requires DMV to report to the Legislature regarding the effectiveness of the IID pilot project to reduce the number of first-time violations and repeat DUI offenses. (Vehicle Code § 23701)

This bill extends the existing pilot project until July 1, 2017.

This bill provides that beginning July 1, 2017 all DUI offenders will be required to install an IID for a specified period of time in order to have their license reinstated.

This bill removes the time a person must have a suspended license before he or she is able to apply for a restricted license.

This bill would allow a court to order a person convicted of a “wet reckless” to install an ignition interlock device on his or her car.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past several years this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its "ROCA" policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In December of 2015 the administration reported that as "of December 9, 2015, 112,510 inmates were housed in the State's 34 adult institutions, which amounts to 136.0% of design bed capacity, and 5,264 inmates were housed in out-of-state facilities. The current population is 1,212 inmates below the final court-ordered population benchmark of 137.5% of design bed capacity, and has been under that benchmark since February 2015." (Defendants' December 2015 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).) One year ago, 115,826 inmates were housed in the State's 34 adult institutions, which amounted to 140.0% of design bed capacity, and 8,864 inmates were housed in out-of-state facilities. (Defendants' December 2014 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).)

While significant gains have been made in reducing the prison population, the state must stabilize these advances and demonstrate to the federal court that California has in place the "durable solution" to prison overcrowding "consistently demanded" by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants' Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee's consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

COMMENTS

1. Need for This Bill

According to the author:

A recent report by Mothers Against Drunk Driving (MADD) found that IIDs in California have prevented over 1 million instances of drinking and driving since 2010: <http://www.madd.org/local-offices/ca/documents/California-Report.pdf>

According to DMV data, during the last 30 years, over 50,000 people have died in California because of drunk drivers and over 1 million have been injured. Under current law, installation of IIDs is optional for DUI offenders. A four county pilot program is currently underway in Alameda, Los Angeles, Sacramento, and Tulare counties requiring IIDs for any convicted drunk driver (AB 91 of 2009). SB 61 (Hill, 2015) temporarily continued the 4-county pilot program so the legislature has time to review the DMV report in 2016 and determine the best way to move forward.

Currently, 25 states have laws requiring ignition interlocks for all convicted drunk drivers. According to the Centers for Disease Control and Prevention (CDC), requiring or highly incentivizing interlocks for all convicted drunk drivers reduces drunk driving recidivism by 67 percent. The CDC recommends Ignition interlocks for everyone convicted of DWI, even for first offenders.

Since New Mexico's interlock law was implemented in 2005, drunk driving fatalities are down by 38 percent. Since Arizona and Louisiana implemented their interlock law in 2007, drunk driving deaths have decreased by 43 and 35 percent, respectively. In Oregon, as a result of 2008 interlock law, DUI deaths are down 42 percent.

About half of California DUI offenders drive illegally after their arrest and choose not to participate in treatment or IID programs. SB 1046 will seek to bring more offenders into the legal system by creating an incentive program allowing offenders to drive soon after their arrest if they show proof of IID installation. The legislation will also continue & expand assistance for low-income offenders.

The bill is consistent with reports from the National Transportation Safety Board and the U.S. Centers for Disease and Prevention which both recommend that all people convicted of drunk driving should have ignition interlock devices installed in their cars. The National Highway Traffic Safety Administration found that “ignition interlocks, when appropriately used, prevent alcohol-impaired driving by DWI offenders, resulting in increased safety for all roadway users.”

2. The Pilot Project

In 2009, AB 91 (Feuer) created an IID pilot project in four counties which mandates the use of an IID for all DUI offenders. DMV will issue a soon regarding the effectiveness of the pilot project in reducing the number of first-time violations and repeat offenses in the specified counties.

The rationale for a pilot project was to see what impact a mandatory IID program has on recidivism in California. While the impact of IID has been studied elsewhere, with mixed results, the comparisons are not perfect because while some of the other states began mandating IID at the same time they strengthened other sanctions, California has had a complex group of sanctions including high fines, jail time, licensing sanctions, mandatory drinker-driver treatment programs and optional IID in place since the mid-1980's with sanctions being evaluated, changed and strengthened on an ongoing basis since. The thought was that with a pilot project, DMV can evaluate how best a mandatory IID system should work in California. By evaluating four counties, the counties without the mandatory programs act like a control group for the researchers at DMV. Evaluating how the DUI sanctions work is something DMV researchers have been doing with great success since 1990. DMV's reports have helped inform the Legislature on where changes needed to be made and have helped reduce recidivism in California.

Last year, SB 61 (Hill) extended the pilot project until January 1, 2016.

3. Results From the Pilot Project

In January of 2015, DMV released their report on the pilot project entitled "General Deterrent Evaluation of the Ignition Interlock Pilot Program in California." The report found that even though "[d]uring the pilot period, IID installation rates increased dramatically in the pilot counties to include 42.4% of all DUI offenders combined, compared to 2.1% during the pre-pilot period" the study found that "there were no differences in the license-based rates of DUI convictions in the pilot counties among first, second, and third-or-more DUI offenders during the pilot program as compared to the pre-pilot program." (California DMV, "General Deterrent Evaluation of the Ignition Interlock Pilot Program in California" January 2015 Executive Summary p. vii) Thus the pilot projects showed no "general deterrent" effect of requiring the installation of an IID by all offenders. Requiring the installation did not result in fewer DUI's in the pilot counties.

By the January 2015 due date, DMV was not able to gather the appropriate data to do an additional report on specific deterrent but is finishing up that additional report. While general deterrent shows whether the threat of an IID will keep a person from committing a DUI the first time, a report on a specific deterrent will show whether the installation of an IID by a DUI offender will keep that person from becoming a repeat offender. Both are relevant goals in deciding what sanctions shall be imposed on a DUI offender.

Because the report of the pilot projects showed no general deterrent and it is not yet known what the results on specific deterrent will show, DMV recommends "that subsequent legislative action take into consideration the findings of the specific deterrence evaluation of this pilot program." (CA DMV id at p.5) This report has not been released yet but is expected to be released sometime soon.

4. Rates of Installation in the Pilot Counties

As the author notes in his background, the installation rates for IID in this mandatory program increases significantly in the pilot counties from a pre pilot average of 2.1% to an average of 42.4% installation rates. Non-pilot counties also saw a small increase in installation during this time frame, from 2.1% to 4.3% because of a incentivized voluntary installation program that began at the same time as the pilot. While the increase is significant, one could ask that in a mandatory program why the installation is not higher. A person with a DUI cannot get his or her license back until he or she has shown that he or she has installed an IID. First offenders make up most of the DUI offenders and most first time DUI offenders can get their license back within 6 months and many are eligible for a restricted license sooner. The installation rate may indicate a significant number of offenders who have not gone back to get a valid license. They may not be driving or they may be driving without a valid license and insurance.

5. Mandatory Installation of IID

This bill would require any person convicted of a DUI to install an ignition interlock device on all the cars he or she owns for a specified period of time. A person convicted of a first offense has a six month suspension and the IID must be installed for six months. A person with a second offense has a two-year suspension and the IID must be installed for 12 months. A person with a third offense has a three year suspension and the IID must be installed for 24 months. A person with a fourth or subsequent offense has a four year suspension and the ID must be installed for 36 months.

For repeat offenders, the mandatory IID time frame is shorter than the time for the suspended license. As discussed more below, this bill allows the IID to be installed immediately after conviction, maybe as soon as an administrative suspension. It is unclear how this works. A person with a 2nd DUI immediately installs the IID and does the mandatory time of 12 months but would then still have an additional 12 months to serve out their suspension. If he or she has complied with the 12 months can he or she remove the IID and still drive on a restricted license?

6. Removal of Hard Suspension

Under existing law, a person convicted of a DUI must wait a period of time before they can apply to DMV for a restricted license. Since 2005, all licensing actions have gone through DMV not the courts. This bill would remove that mandatory suspension and allow a person to immediately get an ignition interlock device if he or she installs an IID and meets the other requirements. It may also allow the installation during any time of and any administrative suspension since it allows the installation without “any suspension.”

According to the latest DMV report on the DUI Management Information System, DUI arrests in 2011 decreased by 8.0% following decreases of 6.1% in 2010 and 2.9% in 2009. (California DMV 2013 Annual Report of the California DUI Management Information System p. iii)

The report further indicated that the 1-year recidivism rates for all first DUI offenders decreased to the lowest level seen in the past 21 years. The DUI re-offense rate for first offenders arrested in 2010 was 46.1% lower than the re-offense rate for first offenders arrested in 1990. The 1-year re-offense rate for second DUI offenders continued to remain at the lowest level in the past 21 years. And recidivism decreased from 9.7% in 1990 to 5.2% in 2010, a 46.4% relative decrease for second DUI offenders. (Id atp. 33)

The 2013 and prior reports have all indicated a link between the decline in DUIs and the mandatory suspension of a license because a significant decline occurred after a mandatory administrative suspension (APS) was indicated:

The re-offense rates of second offenders remain higher than those of first offenders across all years. Previous DUI -MIS reports suggested that, while many factors may be associated with the overall decline in DUI incidents for both first and second offenders, the reduction may largely be attributed to the implementation of APS suspensions in 1990. An evaluation (Rogers, 1997) of the California APS Law documents recidivism reductions of up to 21.1% for first offenders and 19.5% for repeat offenders, attributable to the law. (Id 37)

The Committee may wish to consider whether it is good policy to eliminate a sanction that has been studied and appears to reduce the recidivism rate in California and replace it with a sanction that the first study has indicated has no general deterrence and the data has yet to be finally analyzed as to specific deterrence.

7. Reduced Fine if Interlock Installed Early

If a person installs an interlock during his or her hard suspension as discussed above, this bill provides that the court shall reduce his or her fine by \$500.

8. Payment for IID

This bill purports to set up a sliding scale for payment of an IID but it is not clear how it would work.

First it is not clear who has the authority to verify whether the IID installers are actually following the sliding scale set up.

The sliding scale language in the bill describes the provider absorbing portions of “the cost of the ignition interlock device” for those that meet specified income limits. It does not specify what is included in the cost of the device. The device is one cost but the monitoring costs are additional. Are these included?

The bill says that the cost of the IID can only be raised equal to the Consumer Price Index but does not indicate where that price shall currently start.

9. What if You Don't Own a Car?

This bill provides that a driver can indicate he or she does not own a vehicle any longer in order to not be subject to the IID requirement. However, that request must be made 30 days after the DMV notifies the person of the requirement. Thirty days may not be enough time for an offender to realize the true cost of the fines, fees, programs and now IID costs associated with a DUI. An offender may at first think they can keep their car and not drive it during the time of their license only to realize later that they need to sell it or the cost is just not worth it when they are facing the cost of the DUI. Is the 30 days realistic for someone with a 2-year or more license suspension?

10. Support

According to Advocates for Highway Safety:

Drunk driving is a deadly and costly threat to California families. While nationally drunk driving fatalities decreased 2.5 percent in 2013, California experienced a 6 percent increase from the previous year (National Highway Traffic Safety Administration (NHTSA)), and statistics for 2014 alcohol involved crashes show that fatalities remain high. In 2014, 1,053 people were needlessly killed in alcohol-related crashes on California's streets and roads, accounting for over one quarter (29 percent) of all traffic fatalities. Moreover, drunk driving is costly. California taxpayers were burdened by \$5.4 billion in drunk driving related costs in 2013 (MADD). Clearly, this is a serious and expensive problem on California's roads which requires urgent attention and the effective solution of IIDs.

California's current law allows optional use of IIDs statewide, but only about 20 percent of convicted drunk drivers who have a choice of installing an IID or driving on a limited restricted license opt for IID installation. The state also continues to maintain a pilot program requiring the use of IIDs for all offenders in Alameda, Los Angeles, Sacramento, and Tulare counties. Data from the California Department of Motor Vehicle (DMV) shows a higher rate of IID use in the pilot program counties.¹ A recent MADD report on the effectiveness of IIDs in California noted that since the California pilot program began, IIDs have "prevented vehicles from starting over 1 million times because alcohol was detected on the driver's breath."² According to the MADD report, IIDs prevent over 1,900 drunk driving incidents per month in California.

11. Opposition

The California Attorneys for Criminal Justice oppose this bill stating:

Currently, four counties are experimenting with mandatory IID in EVERY case even if a judge makes an alternative finding.

There are sample studies supporting the effectiveness of IID use and greater compliance when ordered on a case-by-case basis or included in a negotiated plea. SB 1046 simply imposes the 4-county experiment statewide. Thus far DMV has not concluded that such a blanket approach is more effective than current law in 54 counties.

Furthermore, California law incentivizes the installation of IID's for second time offenders with significant success. SB 1046 conflicts with this proven approach by mandating its usage for every first-time offenders.

For years DMV statistics have shown that, under current law and using best practices, very few drivers reoffend with the first six months, which is the period covered by SB 1046. As such, a statewide mandate seems to be inconsistent with empirical evidence.

A 54-county expansion will result in an exponential increase in business for IID companies and there has been limited oversight of these companies, especially those who plan to be rewarded with significant increase in revenues as a result of SB 1046. This artificial spike in profits should be contemplated only after a thorough assessment of the practices of the IID businesses in California. This is especially critical when DMV studies do support such a mandatory approach.

Lastly, the four-county experiment of eliminating judicial discretion has not been fully analyzed to determine whether this is the most appropriate public policy. We anticipate the DMV report will address many of these concerns and the Legislature can explore the department's findings to determine appropriate next steps. Until then, any action on this issue is premature.

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