
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: SB 61 **Hearing Date:** March 24, 2015
Author: Hill
Version: March 11, 2015
Urgency: No **Fiscal:** Yes
Consultant: MK

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

HISTORY

Source: Author

Prior Legislation: 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: MADD; Advocates for Highway and Auto Safety; Alameda County District Attorney; Alameda County Sheriff’s Office; American Nurses Association\California; California State Sheriffs’ Association; California Council on Alcohol Problems; California State Council; County of San Diego; Emergency Nurses Association; National Safety Council; National Transportation Safety Board; Peace Officers Research Association of California

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 are met:

- 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 are met:

- 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, 2016.

This bill provides that beginning July 1, 2016 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 eight 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 its most recent status report to the court (February 2015), the administration reported that as "of February 11, 2015, 112,993 inmates were housed in the State's 34 adult institutions, which amounts to 136.6% of design bed capacity, and 8,828 inmates were housed in out-of-state facilities. This current population is now below the court-ordered reduction to 137.5% of design bed capacity." (Defendants' February 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).

While significant gains have been made in reducing the prison population, the state now 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 the Bill

According to the author:

California needs to improve the way we handle DUI offenders since DUI crashes kill 1,000 people each year in this state and injure more than 20,000. According to the DMV's 2012 report, Identifying Barriers to Driving Privilege Reinstatement Among California DUI Offenders, "Only about 54% of the eligible 1st offenders and 36% of the eligible 2nd offenders had fully reinstated their driving privileges 3.8 to 4.8 years after their arrest." According to the DMV's January 2015 report on the AB 91 four-county IID pilot program, General Deterrent Evaluation of the Ignition Interlock Pilot Program in California, only 42% participated in the IID program. Whether we're talking about the IID program or the general DUI population, a large portion of DUI offenders are likely driving illegally since they aren't participating in the required programs.

Senate Bill 61 seeks to increase participation in DUI programs statewide by allowing DUI offenders to reinstate driving privileges immediately after arrest if they install an IID. This immediate driving incentive allows offenders to continue to work and handle family responsibilities without waiting months for DMV and court hearings.

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 report on the pilot project in January of 2015 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.

3. Results From the Pilot Project

In January of this year, 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 intends to have such a report completed by the fall of 2015. 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. This evaluation is anticipated to be completed in the fall of 2015.” (CA DMV *id* at p.5)

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 21years. 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 21years. 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. 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.

8. 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. 30 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?

9. Permissive Requirement on Wet Reckless

A person arrested for a DUI who has a low blood-alcohol level, or in cases where there may be a weakness in the proof, may plea to a reckless driving with the agreement of the District Attorney and the Court. This is known as a “wet reckless.” This bill would allow a court to order a person convicted of a wet reckless to install an IID. This authority has not previously existed.

10. Support

In support MADD states:

SB 61 will help to stop repeat DUI offenses as offenders who are on the device must prove their sobriety when operating a vehicle on California roadways. The interlock should only be removed after a convicted drunk driver proves that he or she can drive sober on California roadways. General deterrence of drunk driving may not necessarily be accomplished by DUI countermeasures unless such laws are highly publicized. General deterrence typically occurs via high visibility law enforcement activities such as saturation patrols or well publicized sobriety checkpoints.

11. Opposition

California Attorneys for Criminal Justice oppose this bill stating:

CACJ was heavily involved in the negotiation of the details of the pilot project which was adopted by AB 91 (Feuer). One key condition accepted by all key parties was that a study was to be conducted by the DMV to assess the effectiveness of the project. This includes compliance rates, reasons for noncompliance and the affordability gap. CACJ's concerns has been that the many layers of fines and fees imposed on low income individuals convicted of DUI results in further negative consequences. If drivers are unable to pay the fines in a timely manner, they are subject to warrants or other enhanced actions.

The concept of mandatory interlock devices for first-time offenders has been included in numerous pieces of legislation over the years. These efforts were unsuccessful in large part because studies question whether IID's are effective deterrents to future DUI's. In fact, a prior study by the California Department of Motor Vehicles indicates that recidivism was equal, if not higher, for those individuals who installed an IID, thereby undermining significant justification for the bills.

In regards to the cost of interlock devices, although a "sliding scale" was inserted as part of the negotiation, we are continually hearing of clients who find the installation cost of the IID, monthly calibration fees, and other associated fees, as cost prohibitive.

As drafted, even if these individuals register 100% compliance with all other terms and conditions of their sentence and probation, they will be unable to obtain a valid driver's license if they cannot pay the operational costs of the devices. We anticipate the DMV report will address many of these concerns and the Legislature can explore the department's findings to determine the next-steps.

In essence, this bill is premature and should be postponed until all stakeholders have the benefit of the DMV report. This will allow us to collaborate to identify effective strategies going forward. Mandatory IID's is only *one* option. We should explore all possibilities before adopting a statewide mandate.

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