

Date of Hearing: April 23, 2024
Counsel: Andrew Ironside

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 2210 (Petrie-Norris) – As Introduced February 7, 2024

SUMMARY: Removes the discretion of the court to only order an ignition interlock device (IID) for a first time DUI offender when appropriate based on an individualized evaluation of the facts. Specifically, **this bill:** Requires the court to order, for a period of six months, installation of a functioning, certified IID on any vehicle that the person operates and prohibit that person from operating a motor vehicle unless that vehicle is equipped with a functioning, certified IID.

EXISTING LAW:

- 1) 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. (Veh. Code, § 23152 subds. (a), (f), & (g).)
- 2) Provides that it is unlawful for any person, while having 0.08 percent or more, by weight, of alcohol in their blood to drive a vehicle. (Veh. Code, § 23512(b).)
- 3) States that a person who is convicted of a first DUI is subject to the following penalties when given probation:
 - a) Possible 48 hours to 6 months in jail;
 - b) A fine of \$390 to \$1,000 plus penalty assessments;
 - c) Completion of a 3-month treatment program or a 9-month program if the BAC was .20% or more; and,
 - d) Six month license suspension or 10 month suspension if 9-month program is ordered, and;
 - e) States that a 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. (Veh. Code, §§ 13352 subd. (a)(1), 13352.1, 13352.4, 23538(a)(3).)
- 4) Authorizes the court to order a first-time DUI offender to install a functioning, certified ignition interlock device on any vehicle that the person operates and prohibit that person from operating a motor vehicle for up to six months unless that vehicle is equipped with a functioning, certified ignition interlock device. (Veh. Code, § 23575.3, subd. (h)(1)(A)(i).)

- 5) Requires the DMV, if the court orders the installation of an IID, to place the restriction on the driver's license record of the person that states the driver is restricted to driving only vehicles equipped with a functioning, certified ignition interlock device for the applicable term. (Veh. Code, § 23575.3, subd. (h)(1)(A)(i).)
- 6) Provides that a person convicted of a first DUI offense may apply to the DMV for a restricted license, as specified. (Veh. Code, § 23575.3, subd. (h)(1)(A)(ii) & (iii).)
- 7) 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. (Veh. Code, § 13352.4.)
- 8) States that a person convicted of a first DUI offense, if not given probation, faces punishment of up to six months in jail, 96 hours of which is required, a suspension of their driver's license contingent upon completion of a specified DUI program, and applicable fines and penalty assessments. (Veh. Code, §§ 13352 subd. (a)(1), 13352.1, 13352.4, 23536.)
- 9) States that if a first time DUI offender is found to have a blood concentration of .20% BAC or above, or refused to take a chemical test, the court shall refer the offender to participate in a 9-month licensed program. (Veh. Code, § 23538 subd. (b)(2).)
- 10) States 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 license may not be reinstated until the person gives proof of insurance and proof of completion of the required program. (Veh. Code, § 13352.1.)
- 11) Provides that a person who is convicted of a first DUI with injury, if not given probation, faces punishment with 16 months, 2 or 3 years state prison, or 90 days to one year in county jail. Applicable fines and penalty assessments, a specified DUI program, and a one year driver's license suspension also apply. (Veh. Code, §§ 13352 subd. (a)(2), 23554.)
- 12) Provides that a person who is convicted of a first DUI with injury, if given probation, faces punishment of 5 days to one year in jail, applicable fines and penalty assessments, applicable DUI programs, and a one year driver's license suspension. (Veh. Code §§ 13352, subd. (a)(2), 23554.)
- 13) Creates a pilot project that requires a person convicted of a second or subsequent DUI or DUI causing injury to install and maintain an IID for 12 months for a second offense, 24 months for a third offense and for 36 months for a fourth or subsequent offense. Proof of installation of the IID, along with other requirements, permits a person to get a restricted license after a specified period of time. (Veh. Code, §§ 13352; 13352.4; 13353.3; 13353.6; & 13353.75.)
- 14) Provides that the existing IID pilot project shall sunset on January 1, 2026. (Veh. Code, §§ 13352; 13352.4; 13353.3; 13353.6; & 13353.75.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, “DUI statistics offer a somber reminder of the dangers intoxicated drivers pose to our communities.

“Nearly 105,000 drivers in California were arrested for DUI in 2022. In its most recent report, the Office of Traffic Safety cited a 16.1% increase in alcohol-impaired crashes vs. previous years and that nearly 1 out of 3 traffic fatalities involved drivers above the .08 blood alcohol legal limit.

“Drivers suspended for highway safety reasons are three times more likely to be involved in a crash, due in part to the lack of effective accountability for their initial unsafe behavior.

“According to the CDC and Mothers Against Drunk Driving, up to 75% of convicted drunk drivers continue to drive on a suspended license.

“Current law in California requires Judges to order Ignition Interlock Devices (IIDs) only for all repeat (2nd or more) offenders. This is despite the fact that a DMV study from 2016 found that ignition interlocks are 74% more effective in reducing DUI recidivism than license suspension alone for first offenders during the first 6 months after conviction. In addition, 35 other states plus Washington D.C. require IIDs for all offenders.

“AB 2210 would align California’s laws with these other states and require that first time DUI offenders be required to install an Ignition Interlock Device on their vehicle for a period of 6 months. This is an important step in our fight against drunk driving and will help keep our roads safe.”

- 2) **Required Use of IIDs:** Existing law gives courts discretion to impose an IID upon a first time DUI offender. (Veh. Code, § 23575.3.) By allowing the courts discretion to impose an IID on first time offenders, it provides the court an opportunity to tailor the sentence in the appropriate manner to the facts of the crime, the person’s history, and the person’s current circumstances.

A judge may determine that an IID is not the most appropriate remedy when a person has been convicted of a first time DUI and there is no evidence of alcohol abuse or other history of poor judgment. A court might find that imposition of an IID is not the best remedy if the defendant is part of a household where a single car is shared between the defendant and other family members and requiring an IID on that car will burden family members that have engaged in no wrongdoing.

"Society receives maximum protection when the penalty, treatment or disposition of the offender is tailored to the individual case. Only the trial judge has the knowledge, ability and tools at hand to properly individualize the treatment of the offender." (*People v. Williams* (1970) 30 Cal.3d 470,482, citation and internal quotation marks omitted.)

A June 17, 2016 DMV report on the IID pilot project evaluated the project from two perspectives—an “intent to treat” evaluation and “the restricted license evaluation.” “Intent to Treat” was the group of individuals subject to the requirement that they install an IID, regardless of whether they installed an IID and complied with the law. “The restricted

license evaluation” consisted of the individuals that were subject to the IID mandate and complied with the requirements of the program. DMV found that the IID-restricted license program had “mixed traffic safety impacts.”

For first time DUI offenders in the pilot project, the study found in the Intent-to-Treat Evaluation:

- The AB 91 program is not associated with an increase or decrease in the odds or hazards of a subsequent DUI conviction over the 12-month time period.
- The AB 91 program is not associated with a reduction or increase in the odds or hazards of a subsequent DUI incident over the 12-month time period.

First offenders in non-pilot counties have a 6.1% lower hazards or odds of a subsequent crash relative to those in the pilot counties over the 12-month time period. (California DMV. *Specific Deterrent Evaluation of the Ignition Interlock Pilot Program in California*. p. xi, June 17, 2016” <https://www.dmv.ca.gov/portal/wcm/connect/b1eba1e5-9155-40ba-9a74-0e6e19a0d1bc/S5-251.pdf?MOD=AJPERES>

For first offenders in the Restricted License Evaluation portion the study found that for people with an IID, while there was an initial lower rate DUI in the first 182 days following their conviction, that lower rate diminished over time. In addition, there was a higher rate of hazards or subsequent crashes with those with the IID and that trend increased over the 12 month period. (*Id.* p. xii)

The study also found that:

The study findings indicate a negative association between having an IID-restricted license and subsequent crash involvement for all DUI offender groups. For the first and second DUI offenders, higher crash risk among those with the AB 91 IID-restricted license increases over time relative to DUI offenders with a suspended license. Therefore, although the AB 91 IID program is associated with a significant reduction in DUI recidivism among all DUI offender groups, the program is also associated with an increase in crash involvement among all DUI offenders that are subject to the program. This is particularly problematic since a substantial proportion of these crashes are those involving injuries and/or fatalities (of the overall crash involvement measured in the study, the proportion of fatal/injury crashes ranged from mid-30% to low-40% for different DUI offender groups—which is consistent with what prior California evaluations have reported for these offender groups). (*Id.* p. xv)

This bill would require that an IID be installed for a period of 12 months for those diverted. The question posed by this requirement is whether an IID would be necessary in all cases given the findings by the DMV.

- 1) **Existing IID pilot project:** In 2009, AB 91 (Feuer) created an IID pilot project in four counties which mandated the use of an IID for all DUI offenders. DMV issued a report in June 2016 on the specific deterrent of the pilot project.

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.

SB 1046 (Hill) deleted the four county pilot project when it created a statewide IID pilot project for **repeat** offender DUI.

- 2) **DUI Sanctions:** Most people convicted of a first DUI are given probation. As part of probation, as well as a condition for getting relicensed a person must attend a licensed treatment program, in addition to fines, fees, and license sanctions. The fine for a first-time DUI is between \$390 and \$1,000. (Veh. Code, § 23536.) However, with additional fees and assessments, the cost of a first-time DUI is almost always considerably higher than the base fine. For example, a base fine of \$390 would be subject to the following additional fees and assessments:

- Penal Code section 1464 state penalty on fines: \$390 (\$10 for every \$10)
- Penal Code section 1465.7 state surcharge: \$78 (20% surcharge)
- Penal Code section 1465.8 court operation assessment: \$40 (\$40 fee per criminal offense)
- Government Code section 70372 court construction penalty: \$195 (\$5 for every \$10)
- Government Code section 70373 assessment: \$35 (\$35 for each infraction)
- Government Code section 76000 penalty: \$273 (\$7 for every \$10)
- Government Code section 76000.5 EMS penalty: \$78 (\$2 for every \$10)
- Government Code section 76104.6 DNA fund penalty: \$39 (\$1 for every \$10)
- Government Code section 76104.7 additional DNA fund penalty: \$156 (\$4 for every \$10)

As such, after additional fees and assessments, the minimum fine for a first-time DUI could end up costing \$1,674. This amount does not include the cost of the required DUI program, lasting either three or nine months depending on the person's blood alcohol level. (Veh. Code, § 23538, subd. (b).) A 3 months DUI program generally costs between \$500 and \$800; a 9-month program can cost upwards of \$1,500. Most programs charge for missed activities, transfers, and late payments. (<https://www.dhcs.ca.gov/individuals/Pages/DUI-Program-Fees.aspx>) A DUI program participant may receive a program fee reduction after a financial assessment. (*Ibid.*) For a restricted license with an IID, the DMV also charges a \$55 reissue fee, a \$15 restriction fee, and an additional IID restriction fee. (<https://www.dmv.ca.gov/portal/file/1st-offender-alcohol-non-injury-pdf>)

In addition to the base fine and the cost the DUI program, this bill would require the installation of an ignition interlock device for a first time DUI conviction. Existing law provides a fee scale for the payment of “the costs of the certified ignition interlock device” that limits “program costs” based on a person’s income. (Veh. Code, § 23575.3, subd. (k)(1).) In practice, these costs likely exclude the cost of installing an IID and ongoing costs for calibration and maintenance of the device.

- 3) **Argument in Support:** According to *National Transportation Safety Board*, “Progress addressing alcohol-impaired driving has stalled. In fact, the problem has gotten worse. In 2022, there were 13,542 alcohol-impaired driving fatalities in the United States—only a .7-percent decrease from 2021, which saw the highest number of alcohol-impaired driving fatalities since 2008. The state of California alone lost 1,479 lives to alcohol-impaired driving in 2022, accounting for 33 percent of all motor vehicle fatalities.

“In our 2013 report, *Reaching Zero-Actions to Eliminate Alcohol-Impaired Driving*, we reiterated our recommendation that ignition interlock devices (IIDs) be installed in the vehicles of all drivers convicted of driving while intoxicated (DWI). This was part of a comprehensive set of targeted interventions and supporting research that included stronger laws, swifter enforcement, and expanded use of technology.

“Evaluation of ignition interlock programs over the last two decades has found that IIDs effectively reduce recidivism among DUI/DWI offenders, sometimes by as much as 62 to 75 percent. Additionally, a study released by the Insurance Institute for Highway Safety found that the number of impaired drivers involved in fatal crashes decreased by 16 percent for states that require IIDs for all DUI offenders compared to states with no interlock law.

“Progress toward eliminating impaired-driving fatalities has unnecessarily stagnated. More can—and should—be done to prevent these tragedies. The NTSB believes that the only acceptable number of deaths on our roads is zero, and it has been our charge since our founding to determine how to eliminate transportation fatalities. Deaths due to impaired driving are 100-percent preventable, and mandating the use of IIDs for all DUI offenders will prevent impaired driving and save lives on California roads.”

- 4) **Argument in Opposition:** According to *Root & Rebound*, “The financial consequences of a DUI conviction are considerable and are disproportionately burdensome for low-income drivers. Furthermore, DUI convictions and the consequences that follow are unequally levied on Black and Brown drivers. In addition to the standard penalty fines, drivers also face the – often much more burdensome - costs of DUI class fees, high-cost insurance premiums, DMV licensing fees, and other charges. This bill would add the cost of an ignition interlock device to this list for all first-time convictions. For low-income drivers who are *trying* to comply with their legal obligations, the cumulative financial costs often prevent them from meeting these obligations and leave them with an indefinitely suspended license. Because of both the racial disparities in convictions as well as the racial wealth gap, the financial costs result in the form of racialized wealth extraction. Importantly, the public safety impact of mandatory IIDs is questionable. A recent study by the DMV on the impact of AB 91 (Fauer) that created a pilot for mandatory installation of IIDs found that ‘mandatory ignition interlock installation did not reduce county-wide DUI recidivism below that of comparison counties.’

“Without a license, individuals face decreased employment opportunities and obstacles in caring for family members or getting to medical appointments. Individuals who have no other choice but to drive face additional consequences of driving on a suspended license - *not* because they want to violate the law, but simply because they cannot afford to comply. The inequities of the mandate will also disproportionately impact low-income and marginalized communities of color, who are overrepresented in traffic stops. Without addressing the financial and logistical barriers, the result will be two different systems: one for higher income drivers who can easily pay to comply with the heightened consequences and one of lower income drivers who cannot afford to pay them and therefore will have longer suspensions and bear collateral economic and criminal consequences.

“Even though current law provides a sliding scale for ignition interlock devices it is inadequate. The scale does not provide significant enough reductions, especially given the cumulative costs a driver convicted of a DUI is required to pay. Current law does not make clear that all costs of the device are subject to the fee reduction, including the regular maintenance and calibration cost charged by installers. Current law also does not require adequate notification of the right to request a reduced fee for an ignition interlock device. Individuals often report not knowing that a sliding scale was available that could make the device affordable or how to request it.

“Imposing additional consequences without accounting for the financial and logistical barriers of these consequences will undermine the public safety goals of the bill, cause economic hardship, and result in low-income drivers shouldering a different and more severe punishment than individuals who can afford the device in addition to the other fines and fees imposed for a DUI.”

- 5) **Related Legislation:** AB 2823 (Joe Patterson), would require the period of probation for a person granted probation for vehicular manslaughter while intoxicated to be at least three years. AB 2823 is pending hearing in this committee.
- 6) **Prior Legislation:**
 - a) SB 1021 (Bradford), of the 2021-2022 Legislative Session, would have permitted a diversion program including an IID requirement. This bill was not heard in Assembly Public Safety.
 - b) SB 421 (Bradford) of the 2021-2022 legislative session, would have authorized diversion for specified DUI offenses. SB 421 was held in the Senate Appropriations Committee.
 - c) AB 282 (Lackey) of the 2021-2022 legislative session, would have explicitly prohibited diversion for specified DUI offenses. AB 282 was held in the Senate Public Safety Committee.
 - d) AB 3234 (Ting) Chapter 334, Statutes of 2020, created diversion for most misdemeanor offenses, as specified.
 - e) SB 545 (Hill) of the 2019-2020 legislative session, would have required IIDs to be installed for a period of six months for first time convicted DUI offenders. The hearing SB 545 in the Assembly Public Safety Committee was cancelled at the request of the

author.

- f) SB 1046 (Hill), Chapter 783, Statutes of 2016, extended the IID pilot program in certain counties and required installation of IIDs for specified DUI offenses.

REGISTERED SUPPORT / OPPOSITION:

Support

AAA Northern California, Nevada & Utah
Advocates for Highway and Auto Safety
Automobile Club of Southern California
California Association of Highway Patrolmen
California Police Chiefs Association
Foundation for Advancing Alcohol Responsibility (RESPONSIBILITY.ORG)
Merced County District Attorney's Office
Mothers Against Drunk Driving
National Transportation Safety Board
Peace Officers Research Association of California (PORAC)
Sacramento County District Attorney's Office
Safe: Safety and Advocacy for Empowerment
Streets for All

Opposition

ACLU California Action
California Attorneys for Criminal Justice
California Public Defenders Association
Debt Free Justice California
Legal Services for Prisoners With Children
San Francisco Public Defender
Root & Rebound
Western Center on Law & Poverty, Inc.

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