
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2019 - 2020 Regular

Bill No: SB 545 **Hearing Date:** April 9, 2019
Author: Hill
Version: February 22, 2019
Urgency: Yes **Fiscal:** Yes
Consultant: MK

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

HISTORY

Source: Author

Prior Legislation: SB 1046 (Hill) Chapter 783, Stats. 2016
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. 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. 1998

Support: Advocates for Highway and Auto Safety; Alcoholic Justice; American Academy of Pediatrics, California; California Medical Association; California Peace Officers' Association; California Police Chiefs Association; KidsAndCARS; MADD; National Safety Council; North American Office & United Nations Representative; Peace Officers' Research Association of California; Prevention Institute; San Diego City Attorney's Office; San Diego County Board of Supervisors; Trauma Foundation; Vision Zero Network

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

PURPOSE

The purpose of this bill is to add a mandatory IID requirement on first time DUIs to an existing IID pilot program and to require an extension of the IID installation requirement if a person has a failed start 60 days prior to the end of their installation requirement.

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 approximately 310% 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 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 created 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. It required 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. This pilot project was repealed on January 1, 2019 when a statewide pilot project took effect. (Vehicle Code § 23700; 23701)

Existing law 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 3rd offense and for 36 months for a 4th or subsequent offense.. Proof of installation of the interlock device, along with other requirement, permits a person to get a restricted license after a specified period of time. (Vehicle Code §§ 13352; 13352.4; 13353.3; 13353.6; 13353.75)

Existing law provides that the existing IID pilot project shall sunset on January 1, 2026.

This bill would require a person convicted of a first DUI to install and maintain an IID for the period of the person's restricted license.

This bill would require an IID installer to notify DMV if a person has any failed starts and would provide that if a person submits a failing breath sample within the last 60 days of an installation period that person will have to maintain the IID for an additional 60 days.

This bill makes a number of legislative findings and declarations.

COMMENTS

1. Need for This Bill

According to the author:

SB 545, the Matthew Klotzbach Mandatory Ignition Interlock for DUI Offender Act of 2019, requires all DUI offenders to install an Ignition Interlock Device (IID) in order to reinstate their full driving privileges. 32 other states already require this. **The bill contains assistance for low-income offenders which only requires them to pay 10% of the IID cost.**

More than 1,000 people die and over 20,000 are injured each year in California as a result of drunk driving.

In 2009, the Legislature passed Assembly Bill 91 with nearly unanimous bipartisan support by votes of 78-0 in the Assembly and 31-4 in the Senate. The bill created a four-county pilot program in the Counties of Los Angeles, Sacramento, Alameda, and Tulare requiring ignition interlock devices (IID's) for all DUI offenders.

In 2016, the Department of Motor Vehicles released a report on the pilot program from 2010 to 2016, stating that the department "found a strong and reliable association between possession of an AB 91 IID restricted license and reduced DUI recidivism. The report found that "the AB 91 IID group is associated with 73% lower odds or hazards of a subsequent DUI conviction relative to the comparison

group of suspended drivers and 74% lower odds or hazards of a subsequent DUI incident relative to the comparison group of suspended drivers.”

In 2016, a report released by Mothers Against Drunk Driving (MADD) found that IIDs in California had prevented over 1 million instances of drinking and driving since 2010.

In 2016, Senate Bill 1046 was introduced to expand the pilot program’s IID requirement for all DUI offenders statewide. The bill passed in the Senate with unanimous bipartisan support by a vote of 39-0 and passed by votes of 10-0 in the Assembly Committee on Transportation, 16-0 in the Assembly Committee on Business and Professions, and 20-0 in the Assembly Committee on Appropriations.

An amendment to SB 1046 at the last minute made IIDs for first offenders optional instead of mandatory, contrary to findings in the Department of Motor Vehicles report that showed DUI offenders with IIDs are associated with 73 percent lower odds or hazards of a subsequent DUI conviction relative to the comparison group of suspended drivers and 74 percent lower odds or hazards of a subsequent DUI incident relative to the comparison group of suspended drivers.

Effective January 1, 2019, IIDs are optional for first offenders as a result of SB 1046.

SB 545 mandates IIDs for first offenders consistent with the original pilot program and based on the findings by the Department of Motor Vehicles of “a strong and reliable association between possession of an AB 91 IID restricted license and reduced DUI recidivism.

2. The Original 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.

3. Results from the 4 County Pilot Project

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.”

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

FIRST DUI OFFENDERS

- 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)

4. Mandatory Installation of IID for first offenders

This bill would require any person convicted of a first DUI to install an ignition interlock device on all the cars he or she owns for a 6 months. A person would get credit for an IID installed during the time of the person’s restricted license but prior to conviction.

Existing penalties for a first time DUI include the \$390 to \$1,000 fine, which with penalty assessments is approximately \$1,599-\$4,100; a 3 or 9 month program; restricted license for 6 months and various fees for getting their license reinstated and getting reinsured. Is the additional mandatory installation of an IID appropriate? DMV has cautioned over the years that adding sanctions can cause some of those convicted to opt out of the licensing system:

There is a tendency over time to add new requirements or introduce new programs that DUI offenders must comply with in order to relicense. However, as DeYoung argued in his recent paper (2013), continuing to add new requirements may result in discouraging DUI offenders altogether from complying with all conditions to reinstate their driving privilege and indirectly forcing them out of reach of the postlicensing control system. Therefore, before a new requirement is added to the already complicated set of DUI countermeasures in California, any such new requirements must demonstrate “convincing traffic safety benefits” (DeYoung, 2013). (Id. at p. xviii)

According to the most recent report from DMV on DUI Sanctions.

DUI arrests decreased by 8.6% in 2015, following decreases of 3.5% in 2014 and 7.2% in 2013.

And,

The 1-year DUI reoffense rate for first DUI offenders arrested in 2014 was 3.7% compared to 7.6% in 1990. The 1-year reoffense rate for second DUI offenders was 4.7% compared to 9.7% in 1990. Each of these represents slightly over 50% fewer reoffenses compared to that of 1990 arrestees. (California DMV “2017 Annual Report of the California DUI Management Information System” p. iv and v” <https://www.dmv.ca.gov/portal/wcm/connect/848b335c-1360-4473-a35d-4da3345c666a/S5-257.pdf?MOD=AJPERES&CVID=>

If re-offense rates are down, should we add additional sanctions to first offense DUIs?

5. Failed start

This bill adds to all of the IID pilot project a provision that states if a person has a “failed start” in the last 60 days of their required installment, the required time for the interlock shall be extended by 60 days. A “failed start” means any attempt to start the vehicle with a breath alcohol concentration exceeding 0.03% BAC.

Is this extension appropriate? Is it possible to get a false “failed start”?

6. Legislative Findings

The first Legislative Finding in this bill states:

In 2016, the Department of Motor Vehicles released a report on the pilot program from 2010 to 2016, inclusive, stating that the department “found a strong and reliable association between possession of an AB 91 IID restricted license and

reduced DUI recidivism. Across all DUI offender levels, those with an IID restricted license have lower odds or hazards of a subsequent DUI conviction, and lower odds or hazards of a subsequent DUI incident when compared to drivers with suspended or revoked licenses.” The report also found that “[t]he AB 91 IID group is associated with 73% lower odds or hazards of a subsequent DUI conviction relative to the comparison group of suspended drivers and 74% lower odds or hazards of a subsequent DUI incident relative to the comparison group of suspended drivers.”

The entire quote of the first portion of the finding states:

It bears emphasizing that the current study found a strong and reliable association between possession of an AB 91 IID restricted license and reduced DUI recidivism. Across all DUI offender levels, those with an IID restricted license have lower odds or hazards of a subsequent DUI conviction, and lower odds or hazards of a subsequent DUI incident when compared to drivers with suspended or revoked licenses. For first DUI offenders these differences tend to diminish with time. For second offenders these differences disappear after approximately 2 years. For third DUI offenders the difference in subsequent DUI recidivism did not diminish over the 42-month follow-up period. (Specific Deterrent Evaluation of the Ignition Interlock Pilot Program in California. at p. xiv)

The references to the 73% and 74% are within the first 182 days of installation with the report indicating “this trend tends to **diminish** over the 12 month study period.” (Emphasis in original) (Id. at xii)

If there are going to be Legislative findings in a bill quoting a report, should they include the whole quote?

7. Arguments in Support

According to MADD:

Ignition interlocks are effective in reducing repeat drunk driving offenses by 67 percent while the device is installed compared to license suspension alone. (CDC)

Interlocks help reduce repeat offenses even after the device is removed by 39% compared to offenders who never installed an interlock. (Marcques, 2010)
First-time offenders are serious offenders. Research from the CDC indicates that first time offenders have driven drunk at least 80 time before they are arrested.

Peace Officers’ Research Association of California supports bill stating:

Ignition Interlock devices are proven to save lives. PORAC has always supported the use of these devices in lieu of driver’s license suspensions because it allows a person to go about routine: getting to their jobs; therefore, providing for their families. At the same time, these devices prove to be an effective deterrent to drinking and driving.

8. Argument in Opposition

In Opposition the California Public Defenders Association states:

It is instructive to examine the California history of IID's as a condition of DUI probation. Until 2009 installation of an IID was ordered only for repeat drunk drivers because a large majority of those convicted of a first DUI are never convicted of a second, and it was felt that the risk of re-offending was so low that the deterrent or preventative effect of installing an IID did not justify the additional cost, inconvenience and hardship to the first offender.

There have been past legislative attempts to make IID mandatory for all first time offenders. In 2009, an effort was made to make IID's mandatory for all first offenders. That attempt foundered on the shoals of common sense and the lack of empirical evidence that would support the need for such a measure. As a compromise, AB 91 was passed, establishing a pilot program requiring IIDs for first offenders in four counties and a DMV report in order to see whether there was the necessary evidence to justify its expansion statewide.

Two separate DMV reports demonstrate that the state wide expansion of mandatory IID's for first time offenders is not warranted and may be counterproductive. The mandated 2014 DMV report on the pilot program's effectiveness concluded that the pilot program did not justify a statewide expansion stating that "the pilot program was not associated with a reduction in the number of first-time and repeat DUI convictions in the pilot counties. In other words, *no evidence was found that the pilot program has a general deterrent effect.*" (emphasis added) (CAL-DMV-RSS-14-247) The Legislature extended the pilot program for two years to see whether additional time would provide supporting evidence for a statewide expansion. A new report produced by DMV in 2016 (CAL-DMV-RSS-16-251) concluded that the results of the pilot program were mixed and warranted further study.

SB 1046 was passed in 2016 making IID's for first offenders the norm statewide. Courts could order an IID for any first offender, but if they didn't they were required to impose the alternative penalty of a restricted license, that is, driving strictly limited to driving to and from work, to and from any court ordered drunk driving program, and in the necessary scope of work.

SB 545 is not evidence based. The 2016 DMV Report concluded that the pilot program should not be extended statewide and that further study was warranted. On one hand the report noted that over the short term (six months) the pilot program resulted in fewer DUI convictions. However, the report found the reduced risk of recidivism had disappeared before the two year mark. Even more worrisome, the 2016 DMV report found that the pilot program showed *higher* odds of crashes verses the comparison group. For the first 300 days after a DUI conviction and installation of the IID the incidence of crashes was virtually equal between the pilot program and the comparison groups, but between 300 and 730 days afterwards it was 58% higher and after 730 days it was 116% higher. Finally, the authors of the 2016 DMV report did not recommend that the pilot program be extended statewide, and did not believe the evidence justified such a course. As a matter fact, the report stated that the pilot program showed "mixed traffic safety results." Instead, the

authors recommended that the matter be studied further, and gave several concrete steps in furtherance thereof. The authors found that license suspensions and revocations provide the best deterrent effect, and that cumulative and progressively more onerous punitive measures had the tendency to produce a negative effect because some drivers become overwhelmed and give up trying to satisfy all those conditions, thus voiding the deterrent effect that more measured, and achievable, sanctions could provide.

SB 545 seeks to deny judges the discretion to exercise their wisdom and good judgment in a myriad of individual, and sometimes extraordinary, circumstances to vary from the inflexible norm in order to fashion just sentences as they see fit. This bill removes the courts discretion, in appropriate cases, to delete what may be, for some individuals, such a harsh and counterproductive penalty in favor of a more measured and effective condition. While we believe that IIDs for first offenders was imprudently enacted without sufficient supporting evidence of need, we recognize that is now history. What we urge is that this bill be rejected because it imposes a “one size fits all” form of justice and removes a very modest and measured form of alternative, discretionary justice. As the DMV report notes, such measured justice may very well be a more effective deterrent than more inflexible and onerous provisions.

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