



# Ohio Legislative Service Commission

Joseph Rogers

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## Fiscal Note & Local Impact Statement

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**Bill:** H.B. 78 of the 128th G.A.

**Date:** May 13, 2009

**Status:** As Introduced

**Sponsor:** Reps. Hottinger and Weddington

**Local Impact Statement Procedure Required:** Yes

**Contents:** First-time OVI offender sanctions

### State Fiscal Highlights

STATE FUND

FY 2010 – FUTURE YEARS

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#### State Highway Safety Fund (Fund 7036)

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Revenues

Potential gain in court costs, annual magnitude uncertain

Expenditures

No fiscal effect

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Note: The state fiscal year is July 1 through June 30. For example, FY 2010 is July 1, 2009 – June 30, 2010.

- **Department of Public Safety.** The bill extends an existing \$2.50 court cost to be imposed on first-time OVI offenders subject to the required ignition interlock devices and directs the court cost for deposit in the state's existing State Highway Safety Fund (Fund 7036) for the expenses the Department of Public Safety incurs in operating an existing state registry of Ohio's habitual OVI/OMWI offenders and related Internet database. The potential amount of court cost revenue that could be generated annually is uncertain.

# Local Fiscal Highlights

**LOCAL FUNDS**

**FY 2009 – FUTURE YEARS**

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**Court Special Project Fund (counties and municipalities)**

Revenues	Potential gain in court costs, annual magnitude uncertain
Expenditures	- 0 -

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**Indigent Drivers Interlock and Alcohol Monitoring Fund (counties and municipalities)**

Revenues	- 0 -
Expenditures	Subject to available cash, potential increase, annual magnitude uncertain

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**Indigent Drivers Alcohol Treatment Fund (counties and municipalities)**

Revenues	- 0 -
Expenditures	Subject to available cash, potential increase, annual magnitude uncertain

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Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- **Court Special Project Fund.** A court will be permitted, under certain circumstances, to collect an additional \$2.50 in court costs for deposit in its special project fund, if such a fund exists. The potential amount of court cost revenue that could be generated annually for deposit in any given local court's special project fund is uncertain.
  
- **Indigent Drivers Interlock and Alcohol Monitoring/Alcohol Treatment Funds.** A court is likely to have to use available cash in either its Indigent Drivers Interlock and Alcohol Monitoring Fund or Indigent Drivers Alcohol Treatment Fund to pay for sanctions associated with the restricted driving privileges of indigent first-time OVI offenders. The magnitude of the amount of money that any given local court will need for this purpose annually is uncertain, as is whether there would be sufficient cash in either of the two aforementioned funds to pay for those costs.

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## Detailed Fiscal Analysis

### Overview

For purposes of this analysis, the bill most notably:

- Requires a court to mandate that a "first-time OVI offender" whose license is suspended, who is granted limited driving privileges after a 15-day period of "hard suspension," and whose underlying offense is alcohol-related to utilize a certified ignition interlock device on each vehicle the offender operates for the remainder of the period of suspension.
- Permits a court, in the case of a "first-time OVI offender" whose underlying offense is drug-related to utilize a certified ignition interlock device under the above described circumstances.
- Specifies the circumstances under which a court may require the offender to wear a continuous alcohol monitor on a first instance and must require the offender to wear for specified periods of time a continuous alcohol monitor on a second or subsequent instance.
- Requires, upon receipt of information as described in the preceding dot point, a court to send a notice to the offender containing certain specified information.

### First-time OVI offenders under current law

The bill applies to first-time OVI offenders. Offenders with prior convictions are already subject to ignition interlock devices as a condition of being granted limited driving privileges. In addition to any jail time or treatment programs, all first-time OVI offenders are subject to fines and a Class 5 driver's license suspension.

A court currently may grant limited driving privileges relative to that suspension, unless expressly prohibited by law. A court may not grant limited driving privileges during the first 15 days of a suspension imposed on an OVI offender. After this 15-day "hard suspension" period, the court may: (1) grant limited driving privileges and (2) require that the offender not exercise these privileges unless the vehicles the offender operates are equipped with a immobilizing or disabling device including ignition interlock devices.

### Operation of the bill

The bill requires a court to mandate that a first-time OVI offender who is granted limited driving privileges after a 15-day period of hard suspension cannot exercise this privilege for the remainder of the suspension period unless each vehicle the offender operates is equipped with a certified ignition interlock device. The bill further permits a court to require interlock devices for a first-time OVI offender whose underlying offense is drug-related.

Under current law, some courts already authorize limited driving privileges for first-time OVI offenders. Some of these courts may also require ignition interlock devices. The discretion of the courts is what distinguishes current law. The bill would require ignition interlock devices in all cases where a first-time OVI offender is granted limited driving privileges by a court. The net result will be an increase, of uncertain magnitude, in the number of first-time OVI offenders whose vehicles are subject to ignition interlock devices.

### **OVI convictions generally**

According to data provided by the Department of Public Safety's Bureau of Motor Vehicles (BMV), in calendar year (CY) 2006, there were 58,346 individuals convicted of an OVI-related offense in Ohio. Of this total number of convictions, about 45,074 involved offenders that had no prior OVI-related convictions within the previous six years, which constitutes a first-time offender under the bill. These numbers were somewhat reduced for CY 2007, in which there was a total of 42,545 OVI-related convictions. Of these convictions, about 33,049 were first-time offenders. These numbers suggest that, in any given year, it is conceivable that tens of thousands of OVI offenders statewide (perhaps in the range of up to between 30,000 and 50,000 first-time violators) could fit the driving restrictions specified by the bill.

A court will still retain the discretion as to whether or not limited driving privileges should be granted to a first-time OVI offender, and presumably all of the courts will not use this sanction all of the time. This discretion complicates one's ability to estimate the potential size of the affected driving population, as we do not know the frequency with which judges who do grant limited driving privileges to first-time offenders also require ignition interlock devices as a condition of the privilege. On one extreme, there could be tens of thousands of cases in which ignition interlock devices become a requirement, whereas under current law the use of such a device in the case of a first-time OVI offender is not a requirement.

### **Ignition interlock devices**

The bill requires that a first-time OVI offender granted limited driving privileges by a court cannot exercise that privilege unless the vehicle is equipped with a certified ignition interlock device, which will prevent the ignition of the vehicle's engine if the operator has been drinking. Unless determined to be indigent by the court, the offender is expected to pay for all of the associated costs.

According to representatives of two of the nationally based ignition interlock manufacturers, there is typically a one-time installation cost, paid directly to a locally contracted vendor that installs and calibrates the device, which may run between \$40 and \$65 depending on the device and vendor. Once installed, an ignition interlock device is typically leased on a monthly basis at a cost of \$60 to \$70 for the duration of the sentence. By requiring these certified ignition interlock devices as a condition of

being granted limited driving privileges, there will in all likelihood be an increase in the number of such devices installed annually statewide.

### **Local costs**

As of this writing, LSC fiscal staff has not been able to reliably determine the frequency with which courts statewide grant limited driving privileges and require ignition interlock devices under current law.

In addition to the difficulties determining the number of first-time OVI offenders that will be subject to the ignition interlock requirement, estimating the cost to local jurisdictions is further complicated by the need to estimate how many first-time offenders will be deemed indigent. While some first-time OVI offenders will undoubtedly be able to pay for the cost of the interlock device, other first-time OVI offenders will not be able to do so. In the latter case, presumably the court would be responsible for covering that cost, most likely by tapping into the local jurisdiction's Indigent Drivers Interlock and Alcohol Monitoring Fund. Whether in any given local jurisdiction the amount of available cash in the fund will be sufficient to pay for the cost of indigent first-time OVI offenders is uncertain, as it is difficult to determine the frequency with which a violator will be subject to an interlock device.

### **Continuous alcohol monitoring**

The bill provides that a first-time OVI offender who has been granted limited driving privileges becomes subject to continuous alcohol monitoring should that person operate a vehicle not equipped with the certified ignition interlock device or attempt to circumvent or otherwise tamper with the interlock device, or a court receives notice that a certified ignition interlock device has prevented an offender from starting a motor vehicle. The bill provides that in any of these circumstances, a court may require the offender to wear a continuous alcohol monitoring sensor if it is the first instance. On a second such occurrence, the court must require the offender to wear a continuous alcohol monitor for a minimum of 40 days. On a third or subsequent occurrence, the alcohol monitor must be worn for at least 60 days.

### **Local costs**

According to a representative of the leading vendor for this product, Alcohol Monitoring, Inc. of Highlands Ranch, Colorado, the cost of each continuous alcohol monitoring installation, which includes the modem and bracelet worn by the offender, involves a one-time equipment expense of somewhere between \$50 and \$100, plus \$10 to \$12 per day for the cost of the remote monitoring. The vendor conducts all monitoring functions for its Colorado location.

Thus, in order for the court to implement a continuous alcohol monitoring program, it will not need to purchase and maintain monitoring equipment, nor perform any monitoring. Local law enforcement or the court's probation department would be notified of violations as they occur. Depending on how the probation department chooses to handle these notifications, there may be some increase in local expenses

associated with the manner in which violations are addressed. LSC fiscal staff is not certain how courts would handle violations or the magnitude of any associated costs.

Unless determined by the court to be indigent, an offender subject to continuous alcohol monitoring would pay all associated costs. If the offender is determined to be indigent, then the county or municipality would presumably utilize available revenues from either their Indigent Drivers Alcohol Treatment Fund or Indigent Drivers Interlock and Alcohol Monitoring Fund to pay for the monitoring costs. It is difficult to reliably estimate the number of additional offenders that would, as a result of the bill, be subject to continuous alcohol monitoring and determined by the court to be indigent. Some offenders directly affected by these provisions will likely not be able to afford the \$300 to \$360 in monthly remote monitoring charges, let alone the initial one-time installation charge of \$50 to \$100. Whether the magnitude of the local funds will be sufficient to offset the additional continuous alcohol monitoring expenses created by the bill is uncertain.

### **Written notifications**

The bill requires that a court must send a first-time OVI offender written notice detailing the evidence it has received of an instance whereby the ignition interlock device was tampered with or denied the offender access to the vehicle. It is not clear how many such notifications a court will be required to produce annually, or how much these will cost.

### **State and local revenues**

The bill specifies, pursuant to a provision in existing OVI law, that in any case in which a court issues an order prohibiting an offender from exercising limited driving privileges unless the vehicles the offender operates are equipped with a certified ignition interlock device, or requires an offender to wear a monitor that provides for continuous alcohol monitoring that is remote, the court must impose an additional court cost of \$2.50 on the offender that is forwarded for deposit in the state treasury. Under current law, a court is also permitted to collect an additional \$2.50 for deposit in its Court Special Projects Fund, if such a fund exists. A court may not waive the payment of the court costs unless the court determines that the offender is indigent and waives the payment of all court costs imposed upon the indigent offender.

The \$2.50 court cost forwarded to the state treasury is deposited to the credit of the State Highway Safety Fund (Fund 7036) and is designated for the purpose of paying the costs that the Department of Public Safety incurs in operating an existing state registry of Ohio's habitual OVI/OMWI offenders and related Internet database.

The potential amount of court cost revenue that could be generated annually for deposit in the state's Fund 7036 or any given local court special projects fund is uncertain.