

**TESTIMONY OF DEPUTY SECRETARY KURT MYERS
PENNSYLVANIA DEPARTMENT OF TRANSPORTATION
HOUSE BILL 639
HOUSE TRANSPORTATION COMMITTEE HEARING
(HARRISBURG)
MARCH 25, 2009**

Good morning. My name is Kurt Myers, and I am the Deputy Secretary for PennDOT's Safety Administration. On behalf of Secretary of Transportation Allen Biehler, I appreciate the opportunity to testify today on House Bill 639, which would require ignition interlock for first-time DUI offenders.

As you are aware, ignition interlock is a device that is installed on motor vehicles to prohibit individuals under the influence of alcohol from operating the vehicle. Over the past nine years, Pennsylvania's Ignition Interlock Law has evolved. Act 63 of 2000 required an individual convicted of a second or subsequent DUI offense, regardless of the date the offense occurred, to have an approved ignition interlock device installed on each motor vehicle and maintain the device on their vehicle(s) for one year before being eligible to apply for an unrestricted driver's license. The law also said that individuals who did not install the ignition interlock device on their vehicle(s), would be required to serve an additional year's suspension.

As the law was written, it not only required the court to order ignition interlock for second and subsequent offenses, but it made ignition interlock a requirement individuals had to meet in order to have their driving privileges restored. There were instances where the courts failed to order ignition interlock for second and subsequent offenses, but because it was also a restoration requirement, individuals still had to comply to be restored. As a result, the law was challenged in 2003, and the Pennsylvania State Supreme Court ruled that it was unconstitutional for the court to order ignition interlock. In addition, it was determined that although PennDOT could not require the ignition interlock device be installed, we could require individuals to obtain ignition interlock driver's licenses before restoring their driving privileges.

Act 24 of 2003 clarified the existing law putting the onus on PennDOT to require ignition interlock as a restoration requirement and made it mandatory that every second or subsequent DUI offender have an ignition interlock device installed on their vehicle(s), thereby eliminating the provision that an individual could serve an additional one year suspension in lieu of obtaining an ignition interlock device.

Act 211 of 2004 defined and required a 10-year look-back period when counting DUI offenses for determining ignition interlock. Prior to this change, individuals with a second or subsequent DUI offense, regardless of when it occurred, were required to comply with the ignition interlock before their driving privileges could be restored.

Looking forward, PennDOT supports the concept of requiring ignition interlock for first-time DUI offenders in order to reduce the number of repeat offenders. As an example, of the approximate 84,000 DUI convictions in Pennsylvania from 2006 to 2008, 57 percent, or approximately 48,000, were second or subsequent offenses. Had the ignition interlock for first-time DUI offenders been required, it is our belief that the percentage of second or subsequent DUI offenses would have been reduced. While there is limited data to support the effectiveness of ignition interlock in reducing the number of repeat offenders at this time, we do know that the Insurance Institute of Highway Safety estimates that ignition interlock reduces the number of repeat offenders by nearly two-thirds. In addition, the state of New Mexico experienced a 26 percent reduction in alcohol-related fatalities after passing a mandatory ignition interlock law for all DWI offenders in 2005.

While PennDOT supports the concept of requiring ignition interlock for first-time DUI offenders, we have some serious concerns with House Bill 639 since it has what we believe are negative and unintended consequences. At a high level, the legislation as currently written would require driving sanctions to be reduced for DUI offenders, it would create an administrative burden on PennDOT to conduct hearings for reduced suspension terms and is, in the opinion of PennDOT's Chief Counsel's Office, in violation of a prior state Supreme Court ruling. We believe amendments to this legislation alone cannot address these issues.

To be specific, our first concern regards placing the ignition interlock requirement in Section 3804 of the Pennsylvania Vehicle Code. This would be in direct conflict with a 2003 Pennsylvania Supreme Court Case, Commonwealth v. Mockaitis, where the original Ignition Interlock Law, passed in 2000, was found to be unconstitutional because it required the court to order ignition interlock. Mandating ignition interlock as part of sentencing will cause extensive litigation, as did similar provisions of the original law. While the requirements defined in House Bill 639 are less intrusive on the judiciary than were the provisions of the original law, they would still require action by the judiciary.

Today, ignition interlock is a restoration requirement, which motivates an individual to comply in order to have his/her driving privilege restored. As written, House Bill 639 would require ignition interlock for individuals who do not receive license suspensions. It can only be assumed that these individuals would be less motivated to comply with the requirement and, further, there is no provision in this legislation to address non-compliance. In 2008, for example, approximately 5,100 first-time DUI offenders in Pennsylvania did not receive a license suspension because their blood alcohol content was between .08% and .099%.

House Bill 639 includes a provision that would mandate PennDOT to consider allowing even the most serious DUI offenders, meaning individuals with high (.10 to .159%) and highest (.16% and higher) blood alcohol content, to reduce an individual's term of suspension from 12 or 18 months to as little as 45 days. This would erode the effectiveness of Pennsylvania's DUI law as it exists today and potentially increase the number of DUI-related crashes and fatalities, as it would seriously reduce the disincentive to drive under the influence. In addition, this would require a burdensome and cost-prohibitive administrative process to be developed to determine when the term could be reduced, not to mention that it could result in individual case litigation, should PennDOT not reduce suspensions for serious DUI offenders.

Lastly, because of the inconsistencies in this legislation, it would be feasible that an individual accepted into the Accelerated Rehabilitative Disposition Program with a Blood Alcohol Content of .08 to .15, would not be required to comply with ignition interlock. In 2008, approximately 9,400 individuals with a blood alcohol level of .08 % to .15% were accepted into the Accelerated Rehabilitative Disposition Program.

Again, while we support the concept of ignition interlock for first-time DUI offenders, we recognize that there are operational and cost impacts that need to be balanced with safety. We recommend that this legislation be rewritten and, that if this concept moves forward, a committee of subject matter experts from all disciplines work collectively to draft legislation that would effectively address first-time DUI offenders while maintaining the integrity of the current law.

I would also like to mention that we have reviewed House bill 914, which would require ignition interlock for first-time DUI offenders with a blood alcohol content of .10% or higher. We have no concerns with this legislation as written. However, if we are committed to reducing the number of repeat DUI offenders, we should consider legislation that mandates ignition interlock for all first-time offenders regardless of their level of impairment.

At this time, I am available to take any questions you may have. Thank you.