

**FAST FACTS:**

- Repeat drunk drivers have the ability to stay licensed.
- Judges now have limited jurisdiction over driver's licenses.
- The law provides for increased use of ignition interlock devices.

**MICHIGAN'S NEW****DWI/Sobriety Court Law**

By Patrick T. Barone

**E**ver since the sweeping changes to Michigan's drunk-driving law in 1999, repeat offenders have faced lifetime revocation of their driver's licenses. If the offender had one prior offense within seven years, he or she is eligible for a review of the revocation after one year,<sup>1</sup> and, depending on the circumstances, if the offender had two prior convictions within ten years, the wait for a review might be as long as five years.<sup>2</sup> Of course, there is no guarantee of success at this license review, and if the offender is unsuccessful, he or she has to wait another year for each subsequent review hearing.<sup>3</sup>

For many repeat offenders, however, this is now the old paradigm. Effective January 1, 2011, a new law, sometimes called the DWI/sobriety court law,<sup>4</sup> significantly changed these revocation periods. It amended seven sections of the drunk-driving statutes<sup>5</sup> and added one section, MCL 257.304, which established new privileges, procedures, and corresponding sanctions for repeat offenders. Most significantly, after an initial 45-day suspension, qualify-

ing repeat offenders will also be able to obtain restricted driving privileges with a breath-alcohol ignition-interlock device, provided they have successfully participated in a sobriety court program.<sup>6</sup>

The new law has a broad definition of what constitutes a prior offense. It requires the Secretary of State to issue a restricted license to an individual whose license was restricted, suspended, revoked, or denied because he or she either has (1) two or more convictions of driving while intoxicated or visibly impaired under Michigan law or (2) one conviction under Michigan law for one of those offenses preceded by one or more convictions for violating a "substantially similar" local ordinance or law of another jurisdiction.<sup>7</sup> An underage drinking and driving conviction from outside Michigan may also count, provided it meets the "substantially similar" requirement.<sup>8</sup> A restricted license will not be issued if the individual is otherwise ineligible to have a driver's license under this act unless the ineligibility is based on license denials for reasons such as procedural failures, previous driving offenses

(under the influence or otherwise), financial obligations relating to a motor vehicle, implied consent suspensions or denials, or the accumulation of 24 or more license points.<sup>9</sup>

Provided the repeat offender is otherwise eligible, a restricted license may be issued after the individual's driver's license has been suspended or revoked for 45 days. For this to occur, the judge assigned to a DWI/sobriety court must certify to the Secretary of State that the individual has been enrolled in a DWI/sobriety program and that an approved ignition-interlock device has been installed on each motor vehicle the individual operates or owns.<sup>10</sup> This restricted license only allows the individual to operate the vehicle while traveling to and from his or her residence, workplace, school, and court-ordered drug/alcohol education or treatment programs<sup>11</sup> and only if the vehicle is equipped with an approved ignition-interlock device. During the restricted driving period, the Secretary of State may also require the driver to submit to driving-skills tests.<sup>12</sup>

The restricted license remains effective until a hearing officer orders an unrestricted license.<sup>13</sup> An individual becomes eligible for an unrestricted license when the latter of the following events occurs: court notification to the Secretary of State that the individual has successfully completed the DWI/sobriety court program<sup>14</sup> or the completion of the minimum license sanction that would have been imposed had MCL 257.304 not applied to the individual.<sup>15</sup> Because the law is written in the conjunctive, it appears that both of these events must occur. For example, if the minimum license sanction for a particular offender would otherwise have been one year and the person successfully completes the sobriety program in nine months, he or she will still not be eligible for the unrestricted license until the one-year period has lapsed. In contrast, if the one-year period has passed but the individual has yet to complete the sobriety program, the individual remains ineligible for the unrestricted license until he or she successfully completes the program.

The DWI/sobriety court law employs a carrot-and-stick approach in that there are incentives to timely complete the DWI/sobriety court program and sanctions if the program is not completed. The DWI/sobriety court must notify the Secretary of State if it terminates an individual from the program or if the individual tampered with or removed the ignition-interlock device, operated a vehicle that was not equipped with an ignition-interlock device without prior court approval, or was charged with a new drunk-driving violation.<sup>16</sup> Upon the Secretary of State's receiving the noti-

fication, the individual will be subject to the maximum suspension or revocation he or she could have received if MCL 257.304 had not applied.<sup>17</sup> If an individual who has completed the program tampers with or removes the ignition-interlock device, operates a vehicle that is not equipped with the device, or is arrested for a new drunk-driving violation, the Secretary of State must suspend or revoke the restricted license.<sup>18</sup> If an offender who has completed the program is convicted of any offense that requires the cancellation, suspension, revocation, or denial of the individual's driver's license, the restricted license will be suspended until the applicable period has elapsed.<sup>19</sup> Furthermore, if the individual fails to pay any court-ordered costs or fines that resulted from the operation of the vehicle, the restricted license will be suspended pending the payment of those costs and fines.<sup>20</sup>

There are additional carrots as well. For example, the DWI/sobriety court law also provides that all required driver responsibility fees assessed by the Secretary of State for any conviction that resulted in the issuance of the restricted license be held in abeyance while the individual retains his or her restricted license and is participating in the DWI/sobriety court program.<sup>21</sup> At the close of the individual's participation in the program, the driver responsibility fees will then be imposed by the Secretary of State and paid pursuant to the payment schedule as prescribed under MCL 257.732a.<sup>22</sup>

Another significant carrot relates to vehicle forfeiture and immobilization. Under the act, if an individual is admitted to the DWI/sobriety court program, his or her vehicle now becomes exempt from both forfeiture and immobilization if the individual is a program participant in good standing or satisfactorily completes the program and does not subsequently violate a Michigan law punishable by forfeiture or immobilization.<sup>23</sup>

It is interesting to note that the DWI/sobriety court law creates license sanction parity with last year's "super drunk" law.<sup>24</sup> Now, super drunks and repeat offenders both have a 45-day hard suspension followed by 320 days of restricted driving with an ignition interlock. Additionally, the law apparently favors sobriety courts by making driving privileges an additional incentive to encourage sobriety. Because of these changes, the law is also likely to encourage participation in a DWI/sobriety court by making it more rewarding to repeat offenders and further encourage the establishment of DWI/sobriety courts around the state.

After an initial 45-day suspension, qualifying repeat offenders will also be able to obtain restricted driving privileges with a breath-alcohol ignition-interlock device, provided they have successfully participated in a sobriety court program.



The new law also gives back to the courts control and authority over the driver's license sanctions lost because of the 1999 amendments of the law. A problem, however, is that the new law creates two classes of repeat offenders: those whose convictions occur in jurisdictions using DWI/sobriety courts and those whose convictions occur in jurisdictions without them. The offenders unlucky enough to be arrested in the latter will have much more draconian driver's license sanctions.

The DWI/sobriety court law applies only to individuals arrested for violations of the drunk-driving laws on or after January 1, 2011.<sup>25</sup> The exceptions are wide reaching, and this new legislation has altered the legal landscape surrounding convictions and subsequent license sanctions incurred by offenders. ■



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## FOOTNOTES

1. MCL 257.303(2)(c) and (4)(a)(i).
2. MCL 257.303(2)(g) and (4)(a)(ii).
3. MCL 257.303(4)(a)(i).
4. 2010 PA 155.
5. MCL 257.291, 257.303, 257.319, 257.625, 257.626, 257.732, and 257.904.
6. MCL 257.304(2).
7. MCL 257.304(1).
8. MCL 257.304(1)(b).
9. MCL 257.304(3)(a) through (n).
10. MCL 257.304(2)(a) and (b); MCL 600.1084(5).
11. MCL 257.304(4)(a) through (d).
12. MCL 257.304(4).
13. MCL 257.304(5).
14. MCL 257.304(5)(a).
15. MCL 257.304(5)(b).
16. MCL 600.1084(6).
17. MCL 257.304(6); MCL 600.1084(7).
18. MCL 257.304(7)(a).
19. MCL 257.304(7)(b).
20. MCL 257.304(7)(c).
21. MCL 257.304(8)(a).
22. MCL 257.304(8)(b).
23. MCL 257.304(9)(a) and (b).
24. See Barone, *Michigan's new "super drunk" law*, 89 Mich B J 36 (March 2010).
25. MCL 257.304(10).