



House of Representatives

General Assembly

File No. 536

January Session, 2011

House Bill No. 6391

House of Representatives, April 14, 2011

The Committee on Judiciary reported through REP. FOX of the 146th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

AN ACT CONCERNING PENALTIES FOR CERTAIN DRIVING UNDER THE INFLUENCE OFFENSES, OFFENDER RISK REDUCTION EARNED CREDITS AND HOME CONFINEMENT FOR CERTAIN NONVIOLENT DRUG OFFENDERS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (g) of section 14-227a of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective July*
3 *1, 2011*):

4 (g) Any person who violates any provision of subsection (a) of this
5 section shall: (1) For conviction of a first violation, (A) be fined not less
6 than five hundred dollars or more than one thousand dollars, and (B)
7 be (i) imprisoned not more than six months, forty-eight consecutive
8 hours of which may not be suspended or reduced in any manner, or
9 (ii) imprisoned not more than six months, with the execution of such
10 sentence of imprisonment suspended entirely and a period of
11 probation imposed requiring as a condition of such probation that
12 such person perform one hundred hours of community service, as

13 defined in section 14-227e, and (C) (i) have such person's motor vehicle
14 operator's license or nonresident operating privilege suspended for
15 one year, or (ii) have such person's motor vehicle operator's license or
16 nonresident operating privilege suspended for three months and be
17 prohibited for the nine-month period following completion of such
18 period of suspension from operating a motor vehicle unless such
19 motor vehicle is equipped with a functioning, approved ignition
20 interlock device, as defined in section 14-227j; (2) for conviction of a
21 second violation within ten years after a prior conviction for the same
22 offense, (A) be fined not less than one thousand dollars or more than
23 four thousand dollars, (B) be imprisoned not more than two years, one
24 hundred twenty consecutive days of which may not be suspended or
25 reduced in any manner, and sentenced to a period of probation
26 requiring as a condition of such probation that such person perform
27 one hundred hours of community service, as defined in section 14-
28 227e, and (C) (i) if such person is under twenty-one years of age at the
29 time of the offense, have such person's motor vehicle operator's license
30 or nonresident operating privilege suspended for three years or until
31 the date of such person's twenty-first birthday, whichever is longer,
32 and be prohibited for the two-year period following completion of
33 such period of suspension from operating a motor vehicle unless such
34 motor vehicle is equipped with a functioning, approved ignition
35 interlock device, as defined in section 14-227j, or (ii) if such person is
36 twenty-one years of age or older at the time of the offense, have such
37 person's motor vehicle operator's license or nonresident operating
38 privilege suspended for one year and be prohibited for the two-year
39 period following completion of such period of suspension from
40 operating a motor vehicle unless such motor vehicle is equipped with
41 a functioning, approved ignition interlock device, as defined in section
42 14-227j; and (3) for conviction of a third and subsequent violation
43 within ten years after a prior conviction for the same offense, (A) be
44 fined not less than two thousand dollars or more than eight thousand
45 dollars, (B) be imprisoned not more than three years, one year of which
46 may not be suspended or reduced in any manner, and sentenced to a
47 period of probation requiring as a condition of such probation that

48 such person perform one hundred hours of community service, as
49 defined in section 14-227e, and (C) have such person's motor vehicle
50 operator's license or nonresident operating privilege permanently
51 revoked upon such third offense. For purposes of the imposition of
52 penalties for a second or third and subsequent offense pursuant to this
53 subsection, a conviction under the provisions of subsection (a) of this
54 section in effect on October 1, 1981, or as amended thereafter, a
55 conviction under the provisions of either subdivision (1) or (2) of
56 subsection (a) of this section, a conviction under the provisions of
57 section 53a-56b or 53a-60d or a conviction in any other state of any
58 offense the essential elements of which are determined by the court to
59 be substantially the same as subdivision (1) or (2) of subsection (a) of
60 this section or section 53a-56b or 53a-60d, shall constitute a prior
61 conviction for the same offense.

62 Sec. 2. Subsection (i) of section 14-227a of the general statutes is
63 repealed and the following is substituted in lieu thereof (*Effective July*
64 *1, 2011*):

65 (i) (1) The Commissioner of Motor Vehicles shall permit a person
66 whose license has been suspended in accordance with the provisions
67 of subparagraph (C)(ii) of subdivision (1) or subparagraph (C)(i) or
68 (C)(ii) of subdivision (2) of subsection (g) of this section to operate a
69 motor vehicle if (A) such person has served the suspension required
70 under said subparagraph, [(C)(i) or (C)(ii),] and (B) such person has
71 installed an approved ignition interlock device in each motor vehicle
72 owned or to be operated by such person. Except as provided in
73 sections 53a-56b and 53a-60d, no person whose license is suspended by
74 the commissioner for any other reason shall be eligible to operate a
75 motor vehicle equipped with an approved ignition interlock device. (2)
76 All costs of installing and maintaining an ignition interlock device
77 shall be borne by the person required to install such device. (3) The
78 commissioner shall adopt regulations, in accordance with the
79 provisions of chapter 54, to implement the provisions of this
80 subsection. The regulations shall establish procedures for the approval
81 of ignition interlock devices, for the proper calibration and

82 maintenance of such devices and for the installation of such devices by
83 any firm approved and authorized by the commissioner. (4) The
84 provisions of this subsection shall not be construed to authorize the
85 continued operation of a motor vehicle equipped with an ignition
86 interlock device by any person whose operator's license or nonresident
87 operating privilege is withdrawn, suspended or revoked for any other
88 reason. (5) The provisions of this subsection shall apply to any person
89 whose license has been suspended in accordance with the provisions
90 of subparagraph (C)(i) or (C)(ii) of subdivision (2) of subsection (g) of
91 this section on or after September 1, 2003, or subparagraph (C)(ii) of
92 subdivision (1) of subsection (g) of this section on or after July 1, 2011.
93 (6) Whenever a person is permitted by the commissioner under this
94 subsection to operate a motor vehicle if such person has installed an
95 approved ignition interlock device in each motor vehicle owned or to
96 be operated by such person, the commissioner shall indicate in the
97 electronic record maintained by the commissioner pertaining to such
98 person's operator's license or driving history that such person is
99 restricted to operating a motor vehicle that is equipped with an
100 ignition interlock device and the duration of such restriction, and shall
101 ensure that such electronic record is accessible by law enforcement
102 officers. Any such person shall pay the commissioner a fee of one
103 hundred dollars prior to the installation of such device. (7) There is
104 established the ignition interlock administration account which shall
105 be a separate, nonlapsing account in the General Fund. The
106 commissioner shall deposit all fees paid pursuant to subdivision (6) of
107 this subsection in the account. Funds in the account may be used by
108 the commissioner for the administration of this subsection.

109 Sec. 3. (NEW) (*Effective July 1, 2011*) Notwithstanding any provision
110 of the general statutes, whenever a person is sentenced to a term of
111 imprisonment pursuant to subsection (g) of section 14-227a of the
112 general statutes, as amended by this act, and committed by the court to
113 the custody of the Commissioner of Correction, the commissioner may
114 immediately release such person to such person's residence subject to
115 the conditions that such person not leave such residence unless
116 otherwise authorized and be subject to electronic monitoring by use of

117 a global positioning system and continuous monitoring for alcohol
118 consumption, and any other conditions that the commissioner may
119 impose. Any person released pursuant to this section shall remain in
120 the custody of the commissioner and shall be supervised by employees
121 of the department during the period of such release. Upon the
122 violation by such person of any condition of such release, the
123 commissioner may revoke such release and return such person to
124 confinement in a correctional facility. For purposes of this section,
125 "continuous monitoring for alcohol consumption" means automatically
126 testing breath, blood or transdermal alcohol concentration levels and
127 tamper attempts at least once every hour regardless of the location of
128 the person being monitored.

129 Sec. 4. (NEW) (*Effective July 1, 2011*) Notwithstanding any provision
130 of the general statutes, the Commissioner of Correction shall establish
131 an incentive plan for inmates to earn credit toward achieving a
132 reduction of their sentence and an early release from incarceration. The
133 incentive plan shall provide for the earning of such credit by
134 compliance with the inmate's accountability plan, good conduct,
135 obedience to the rules and participation in programs that will prepare
136 the inmate to return to the community. The commissioner shall adopt
137 policies and procedures to determine the amount of credit that an
138 inmate may earn toward a reduction in his or her sentence.

139 Sec. 5. (NEW) (*Effective July 1, 2011*) Notwithstanding any provision
140 of the general statutes, whenever a person is convicted of a violation of
141 section 21a-267 or subsection (c) of section 21a-279 of the general
142 statutes and committed by the court to the custody of the
143 Commissioner of Correction, the commissioner may immediately
144 release such person to such person's residence subject to the conditions
145 that such person not leave such residence unless otherwise authorized
146 and be subject to electronic monitoring by use of a global positioning
147 system, and any other conditions that the commissioner may impose.
148 Any person released pursuant to this section shall remain in the
149 custody of the commissioner and shall be supervised by employees of
150 the department during the period of such release. Upon the violation

151 by such person of any condition of such release, the commissioner may
152 revoke such release and return such person to confinement in a
153 correctional facility.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2011</i>	14-227a(g)
Sec. 2	<i>July 1, 2011</i>	14-227a(i)
Sec. 3	<i>July 1, 2011</i>	New section
Sec. 4	<i>July 1, 2011</i>	New section
Sec. 5	<i>July 1, 2011</i>	New section

JUD *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 12 \$	FY 13 \$
Correction, Dept.	GF - Savings	See Below	See Below
Department of Motor Vehicles	TF - One Time Cost	25,000	None
Department of Motor Vehicles	TF - Cost	up to 210,000	up to 210,000
Comptroller Misc. Accounts (Fringe Benefits) ¹	GF - Savings	See Below	See Below
Comptroller Misc. Accounts (Fringe Benefits)	TF - Cost	up to 49,900	up to 49,900

Note: GF=General Fund; TF=Transportation Fund

Municipal Impact: None

Explanation

The bill results in a cost to the Department of Motor Vehicles (DMV) and to fringe benefit costs supported by the Transportation Fund. It also results in significant savings to the Department of Correction (DOC) and General Fund fringe benefit costs. Detailed impacts are described below.

Department of Motor Vehicles

Requiring the use of ignition interlock devices (IID) by first time offenders will result in a one-time cost of \$25,000 in FY 12 and an annual cost of up to \$259,900 to the Special Transportation Fund beginning in FY 12.

¹ The fringe benefit costs for most state employees are budgeted centrally in accounts administered by the Comptroller. The estimated non-pension fringe benefit cost associated with personnel changes is 23.76% of payroll in FY 12 and FY 13. In addition, there could be an impact to potential liability for the applicable state pension funds.

The Department of Motor Vehicles (DMV) could require up to three additional Motor Vehicle Analyst positions (\$70,000 plus fringes for each) for processing and verifying compliance of the ignition interlock device. The agency will require three additional analysts if the courts determine that a majority of first time offenders will be charged with the shorter suspension period in conjunction with IID. The cost estimate takes into consideration that there are approximately 12,000 DUI arrests annually, with about 4,000 first offenders per year and about 1,000 second offense/first conviction.

DUI License Suspension by Type				
Annual Average by Type		Current Law	HB 6391	
First Offense	4,000 - 4,250	One year.	One year.	OR Three months plus nine months with an ignition interlock devise to operate a motor vehicle.
Second Offense/ First Conviction	800 - 1,000	Under 21: Three years or until 21 whichever is longer. 21 and over: one year. Regardless of age prohibited from operating a motor vehicle with out an ignition interlock devise for two years after license suspension.	No change.	
Third & Subsequent Offense/ Second & Subsequent Conviction	380 - 410	Permanent revocation.	No change.	

There is a one-time cost of \$25,000 in FY 12 to the Department of Motor Vehicles (DMV) for reprogramming the interface system between the Driver History System and the Judicial Department.

DOC/House Arrest for Certain Offenders

An annualized savings of at least \$1.1 million would be experienced by the state should the Commissioner of Correction institute a house arrest program for persons sentenced to prison for driving under the influence (DUI), drug paraphernalia crimes or possession of certain drugs. There are currently about 20 low risk drug offenders and 200 low risk DUI offenders under the custody of the Department of Correction (DOC) that would likely be eligible for house arrest.

Estimated potential FY 12 (partial year) and FY 13 savings to the DOC and fringe benefits accounts are shown in the following table.

	Value, in millions of \$ (220 Inmates)	
	FY 12	FY 13
<i>Savings</i>		
DOC Savings, at \$52/day	2,435,800	4,175,600
Fringe Benefits Savings	155,800	267,025
Total Savings	2,591,600	4,442,625
<i>Less Costs</i>		
Electronic GPS & Continuous Alcohol Consumption Monitoring, at \$24.95/day	1,168,700	2,003,485
Net Savings Before Community Supervision	1,422,900	2,439,140
<i>Community Supervision Options</i>		
(a) Community Supervision with programming, at \$17/day	796,300	1,365,100
(b) Community Supervision, without programming, at \$10.75/day	303,500	520,300
<i>Net Savings</i>		
(a) If 100% Receive Community Supervision with programming	626,600	1,074,040
(b) If 100% Receive Community Supervision without programming	1,119,400	1,918,840

DOC/Risk Reduction Credits

The DOC will experience significant savings in response to establishing a sentence reduction credit program. It is expected that an

inmate would earn a specified number of days per month off his or her sentence by meeting minimum behavioral standards. It is also anticipated that the Commissioner of Correction would select a date to which the credits would be applied retroactively. Two commonly referenced dates are 10/1/94 and 4/1/06.²

For comparison purposes, annualized savings attributable to a 5 day/month and 10 day/month credit, retroactive to 10/1/04 or 4/1/06, are presented in the following table, along with the corresponding estimated decline in the inmate population.

# Hours Credit/ Month	Year 1		Year 2	
	Inmate Reduction	Savings (in \$ mil)	Additional Inmate Reduction	Additional Savings (in \$ mil)
<i>Retroactive to 10/1/94</i>				
5 days a month	1,637	25.0	1,272	17.3
10 days a month	3,581	55.9	2,346	33.3
<i>Retroactive to 4/1/06</i>				
5 days a month	1,600	24.8	1,048	13.3
10 days a month	3,416	53.6	2,108	30.0
<i>Retroactive to 1/1/11</i>				
5 days a month	592	9.9	795	13.4
10 days a month	1,498	25.2	1,979	13.3

First year savings would be expected to be 50 - 75% of Year 1 amounts shown in the table, given a three to six month implementation period. Fringe benefit costs would also be reduced accordingly.

The Out Years

The annualized ongoing fiscal impact identified above to DMV and to DOC for the house arrest program would continue into the future subject to inflation as well as the number of offenses committed.

²A “good time” credit program was terminated, effective with convictions after 9/30/94 (PA 93-219). 4/1/06 is the date upon which the DOC instituted an offender accountability plan system that monitors an inmate’s compliance with program, treatment and behavioral expectations.

Savings from the risk reduction credit program would be greater in the ensuing few years, as incrementally more inmates accumulate enough credits to reach their end of sentence.

Pension-related costs for the identified personnel changes will be recognized in the state's annual required pension contribution as of FY 14.

OLR Bill Analysis**HB 6391*****AN ACT CONCERNING PENALTIES FOR CERTAIN DRIVING UNDER THE INFLUENCE OFFENSES, OFFENDER RISK REDUCTION EARNED CREDITS AND HOME CONFINEMENT FOR CERTAIN NONVIOLENT DRUG OFFENDERS.*****SUMMARY:**

This bill:

1. requires the Department of Correction (DOC) commissioner to create an incentive plan for inmates to earn credits to reduce their sentences and achieve an early release from prison;
2. allows the DOC commissioner to immediately release a sentenced inmate to his or her residence subject to certain conditions if he or she was sentenced for (a) driving under the influence (DUI); (b) possessing a controlled substance other than a narcotic, a hallucinogen, or less than four ounces of marijuana; or (c) drug paraphernalia crimes; and
3. provides, as an alternative to the one-year license suspension for a first DUI conviction, a three-month suspension followed by nine months when the offender may operate a motor vehicle only with an ignition interlock device.

EFFECTIVE DATE: July 1, 2011

INMATE INCENTIVE PLAN

The bill requires the DOC commissioner, regardless of other statutes, to create an incentive plan for inmates to earn credits to reduce their sentences and achieve an early release from prison. The plan must provide for earning credit by (1) complying with the inmate's accountability plan (see BACKGROUND), (2) good conduct,

(3) obeying rules, and (4) participating in programs that prepare the inmate to return to the community. The commissioner must adopt policies and procedures to determine the amount of credit an inmate can earn to reduce a prison sentence.

RELEASE TO HOME

The bill allows the DOC commissioner, regardless of other statutes, to immediately release a sentenced inmate to his or her residence if he or she was sentenced for: (1) DUI; (2) possessing a controlled substance other than a narcotic, a hallucinogen, or less than four ounces of marijuana; or (3) drug paraphernalia crimes. Someone on release:

1. cannot leave the residence without authorization,
2. is subject to electronic monitoring by a global positioning system, and
3. is subject to any other conditions the commissioner imposes.

In addition, DUI offenders must be subject to automatic continuous testing of breath, blood, or transdermal alcohol concentration levels and tamper attempts at least hourly regardless of the person's location (made possible, presumably, by an electronic alcohol testing system).

Someone released to his or her home remains in DOC custody and is supervised by DOC employees. The commissioner can revoke the release and return the person to prison for violating release conditions.

The bill appears to allow DOC to release a person incarcerated for one of these crimes regardless of whether the person is also serving a prison sentence for another crime.

BACKGROUND

Penalties for Drug Crimes

The penalty for possessing a controlled substance other than a narcotic, a hallucinogen, or less than four ounces of marijuana is:

1. for a first offense, up to one year in prison, up to a \$1,000 fine, or

both;

2. for a subsequent offense, (a) up to five years in prison, up to a \$3,000 fine, or both or (b) an indeterminate sentence of up to three years; and
3. a mandatory two-year prison sentence running consecutively to the term imposed for possession if the crime is committed within 1,500 feet of an elementary or secondary school or a licensed day care center (a judge may depart from this sentence under certain circumstances)(CGS § 21-279(c), (d), and (e)).

The penalty for a drug paraphernalia crime is:

1. a class C misdemeanor (up to three months in prison, up to a \$500 fine, or both) when drug paraphernalia is used to make, test, pack, contain, conceal, or ingest, inhale, or introduce into the body, a controlled substance;
2. a class A misdemeanor (up to one year in prison, up to a \$2,000 fine, or both) when someone delivers drug paraphernalia knowing it will be used for one of these purposes; and
3. subject to a mandatory one-year prison sentence running consecutively to the term imposed for the drug paraphernalia crime if it is committed by a non-student within 1,500 feet of an elementary or secondary school (a judge may depart from this sentence under certain circumstances)(CGS § 21a-267).

Penalties for DUI

A person convicted of DUI is subject to the penalties listed in Table 1.

TABLE 1: DUI CRIMINAL PENALTIES

Conviction	Prison Sentence	Fine	License Suspension
First	Either (1) up to six months with a mandatory minimum of two days or (2) up to six months suspended with probation	\$500- \$1,000	One year

Conviction	Prison Sentence	Fine	License Suspension
	requiring 100 hours of community service		
Second	Up to two years, with a mandatory minimum of 120 consecutive days and probation with 100 hours community service	\$1,000- \$4,000	<ul style="list-style-type: none"> • Offender under age 21: the longer of three years or until age 21 • Offender age 21 or older: one year • Regardless of age: prohibited from operating a motor vehicle without an ignition interlock device for two years after license suspension ends
Subsequent	Up to three years, with mandatory minimum of one year and probation with 100 hours community service	\$2,000- \$8,000	Permanent revocation

Offender Accountability Plan

DOC develops one of these plans for each sentenced offender to formulate treatment goals and program needs. The plan is used to assist the offender’s reintegration into the community. It addresses treatment, educational, and vocational programs and safety and security issues, including behavioral expectations.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable

Yea 29 Nay 12 (03/30/2011)