

Repeat Drunk-driving Sentencing Minimums in Federal Law Federal-aid Transfer Penalty HB 5854 of 2020

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Federal law requires the states to impose minimum sentences of jail or community service for drivers convicted of drunk driving a second time within 7 years, or three or more times. At the start of the second fiscal year in which a state's law fails to require the minimum sentence, 2.5% of the two largest classes of federal road aid—Surface Transportation Block Grants (STBG) and National Highway Preservation Program (NHPP)—are transferred to the Highway Safety Improvement Program (HSIP). An exception can be granted to states that show that at least 75% of repeat offenders receive the minimum sentence, even if not required by law. See below for details and citations.

The Michigan Vehicle Code was amended by P.A.383 of 2020 (HB 5854) to allow suspended jail sentences without community service for convicted drunk drivers who complete a program under the supervision of a Michigan sobriety court or other specialty court, including repeat offenders. Management by a specialty court has been found effective at reducing repeat offenses due to substance abuse, where punishment may not be effective.

Michigan was granted an exception based on attaining the 75% sentencing minimum for Fiscal 2022, but omitted to apply for Fiscal 2023. However, the Infrastructure Investment and Jobs Act (IIJA) of 2022 created a one-year delay before the transfer of aid, so the penalty will not be imposed until Oct. 1, 2023.

To avoid the transfer of aid, Michigan can—

1. Obtain an annual report from the State Court Administrative Office (SCAO) showing the percentage of sentences to jail, prison, or community service and send it from the Governor's Highway Traffic Safety Representative to NHTSA in advance of every October 1st. However, the number of repeat offenders sentenced to jail or community service has fallen far below 75% due to the pandemic, so the exception may never be available again.

If Michigan does not attain the required 75% sentencing level, we can—

2. Accept the annual transfer of 2.5% of STBG and NHPP to HSIP programs, usable for safety projects, police overtime, and other safety programs. It is unclear whether the highway Safety Improvement Program can use an additional \$27 million each year more beneficially than the Surface Transportation Block Grant Program for highway construction and preservation by MDOT, counties, and cities statewide.

Or,

3. Amend the Vehicle Code to partially undo the 2020 reform, and require the federal minimums of jail or prison time or community service from each convicted driver. It would be regrettable to deny flexibility to judges and recede to the more-punitive Congressional standard, but the amount of community service or jail time would not change for most convicts. MDOT is pursuing legislative support for this approach, to restore full STBG and NHPP apportionments in Fiscal 2025.