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Testimony of Leonard R. Stamm in Opposition to
Senate Bill SB653
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My name is Leonard R. Stamm, appearing on behalf of the Maryland Criminal Defense Attorneys' Association. I have been in private practice defending persons accused of drunk driving and other crimes for over 30 years. I am author of *Maryland DUI Law*, and of all post 2013 updates to *Maryland Evidence: State and Federal*, both published by Thomson-Reuters. I am currently a Fellow (former Dean) of the National College for DUI Defense, a nationwide organization with over 1500 lawyer members. I am a former president of the Maryland Criminal Defense Attorneys' Association. I have co-authored amicus briefs filed by the National Association of Criminal Defense Lawyers and the National College for DUI Defense in the Supreme Court cases of *Bullcoming v. New Mexico*, 564 U.S. 647 (2011), *Missouri v. McNeely*, 569 US 141 (2013), and *Birchfield v. North Dakota*, 579 US __, 136 S. Ct. 2160, 195 L. Ed. 2d 560 (2016).

Overview. Under current law, persons accused of drunk driving face either suspension or ignition interlock administratively, separate from, and usually prior to, the case in court, if they refuse to submit to a chemical test of breath or blood or if they submit to an alcohol test with a result of .15 or higher. Persons with a result of .08 or higher but less than .15 have a third option: they are allowed to request a permit that allows driving but limited to employment, education, alcohol education, and for medical purposes for themselves or immediate family members. Under current law, judges have discretion to require ignition interlock for these drivers but it is not mandatory. If they do order ignition interlock it is concurrent with and the driver receives credit for any period of administratively required ignition interlock. The proposed bill makes imposition of ignition interlock by the MVA mandatory for all persons found guilty of Transp. §§ 21-902 (a), (b), or (c).

These bills, while well intended, suffer from a number of problems that in the view of this writer that result in marginal protection of the public while unnecessarily and unfairly punishing some drivers who pose little risk.

1. **Portions of Senate Bill 653 are inconsistent with existing law.** There are inconsistencies with Transp. § 16-205.1. While that section allows drivers who fail to comply with the ignition interlock to serve out their suspensions, the proposed bill

requires compliance before getting a driver's license. The requirement could serve as a permanent preclusion from ever getting a license again. Other drivers failing the test under .15 are allowed to get a work permit or serve a suspension at the MVA. The law creates a double penalty for these drivers.

2. **These bills unfairly target first offenders who are either at or only slightly over the legal limit.** Many of these drivers are social drinkers who are unlikely to reoffend at all, not to mention in the year following their arrest. The proponents of law offer statistics to the legislature showing the number of times that the interlock has caught drivers attempting to drive drunk. However, this data does not reflect the drivers targeted by this law. There is no data showing the number of social drinkers who repeat within the first six months after their first arrest. In my experience, such occurrences are extremely rare. So the law is punishing primarily social drinkers, the vast majority of whom will not ever drink and drive again, and certainly not within the first six months after their first arrest.

3. **Commercial drivers will almost all lose their jobs.** Under current law, professional drivers holding a commercial driver's license (CDL) are not allowed to hold a CDL during the time they have an interlock restriction on their license, even if they are allowed a work exemption under Transp. § 21-902.2. For those drivers at the lower levels who are required to possess a CDL to maintain employment, these provisions are unnecessarily harsh. Current law creates an exception to disqualification of the CDL for those drivers found guilty under § 21-902(b). The proposals eviscerate that exception because these drivers will now lose their CDLs for at least six months, and possibly longer.

4. **The bills unnecessarily punishes drivers in single car families or drivers who do not own a car.** This bill contains an interlock requirement for defendants who receive probation before judgment. The problem is that many of those offenders who do not have an ignition interlock in the car already as a result of the administrative hearing, that usually occurs before court, don't qualify because they don't have a Maryland driver's license or a car. The punishment must fit the crime and this proposal does not. It would represent a double punishment for those offenders that chose a suspension over the interlock at the MVA hearing.

5. **Not all drivers found guilty under Transp. § 21-902(c) consumed alcohol.** Transp. § 21-902(c) prohibits driving while impaired by drugs **or** drugs and alcohol. It makes no sense to require drivers whose offenses did not involve alcohol to have an ignition interlock.

6. **Some drivers cannot satisfy the interlock due to health reasons.** The ignition interlock requires the driver to blow 1.5 liters of air into the device. With a doctor's lung function test showing impaired lung volume, the Medical Advisory Board will consider allowing the installer to set the device to require less air. I have a client of slight height and weight presently who got a normal lung test, but then developed a huge welt on her neck from being unable to satisfy the device. I had to ask her to remove the device. Fortunately, we were still within the 30 days period during which she could request a hearing when that

happened. As her test was under .15 I was able to get her a work permit at her hearing. She will be unable to drive and may lose her job if interlock is required and she cannot drive to work.

For these reasons, the MCDAA opposes this legislation.

Respectfully submitted,

LEONARD R. STAMM