

NEW JERSEY LAW REVISION COMMISSION



DWI IGNITION INTERLOCKS & NEW JERSEY

New Jersey Bar Association
Municipal Court Practice Section

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New Brunswick, New Jersey

New Jersey Law Revision Commission

- Law Revision Commission established in 1925
- Produced the Revised Statutes of 1937
 - continued in operation until 1939
- Functions of Commission then transferred to successor agencies, including Legislative Counsel
- Present-day NJLRC
 - 1985 - 1:12A-1 *et seq.* (effective January 21, 1986) - functions of statutory revision
- Began work in 1987
 - approximately 40 reports enacted into law

New Jersey Law Revision Commission

- Commission mandate:
 - simplify, clarify and modernize New Jersey statutes
- Ongoing review of the statutes
- Correction or removal of inconsistent, obsolete or redundant language
- Comprehensive modifications of select areas
- American Law Institute, National Conference of Commissioners on Uniform State Laws, learned bodies, judges, public officials, bar associations, members of the bar and from the public generally

Commission Reports Enacted

- Anatomical Gift Act (L.2001, c.87)
- Cemeteries (L.2003, c.261)
- Construction Lien Law (L.2010, c119)
- Intestate Succession (L.2001, c.109)
- School Background Checks (L.2007, c.82)
- Uniform Child Custody Jurisdiction and Enforcement Act (L.2004 c.147)

Commission Reports Enacted

- Uniform Commercial Code 9 – Secured Transactions (L.2001, c.117)
- Uniform Electronic Transactions Act (L.2001, c.116)
- Uniform Mediation Act (L.2004 c.157)
- Uniform Prudent Management of Institutional Funds Act (L.2009, c.64)

Commission Statutorily Mandates

- Promote and encourage the clarification and simplification of the law
- Better adaption of law to present social needs
- Secure better administration of justice
- Carry on scholarly legal research and work
- Conduct continuous examination of the general and permanent statutory law

Commission Statutorily Mandates

- Review judicial decisions construing law to discover defects and anachronisms
- Prepare and submit bills designed to: remedy defects; reconcile conflicting provisions; clarify confusing and excise redundant provisions
- Maintain the law in revised, consolidated and simplified form
- Bring the law, and the administration of the law, into harmony with modern conceptions and conditions
- (*N.J.S. 1:12A-8*)

Ignition Interlocks In New Jersey

- Interlock provisions proposed in 1999
 - to be effective 2000
- Effective date delayed to January 2001
- Revised in 2009 with Ricci's Law
 - Effective January 2010

Changes as a result of “Ricci’s law”

- Registration and license plates revocation no longer offered as an alternative to installation of Ignition Interlock Device (IID)
 - 2nd and subsequent offense
- IID installation on vehicle principally operated by offender
 - rather than all vehicles owned, leased or regularly operated
- IID mandatory for .15% BAC and above 1st time operators
 - still optional for lower BAC

Changes as a result of “Ricci’s law”

- IID installation during period of suspension and after as required by statute
- Allowed to start IID vehicle for safety or mechanical repair
 - not a DP offense
- For refusal (4:50.4a) IID required per statute

N.J.S. 39:4-50 et seq. – DWI Provisions

First offense - .08 to .10

License loss	Fines, fees & surcharges	Prison term	Community service, IDRC & Interlock
3 months	\$250 - \$400 fine \$230 IDRC* fee \$100 to drunk driving fund \$100 to AERF (alcohol ed and rehab fund) \$1,000/year (for 3 years) \$75 to Neighborhood Services Fund	Up to 30 days	12–48 hours IDRC*

N.J.S. 39:4-50 et seq. – DWI Provisions

First offense - .10 and greater

License loss	Fines, fees & surcharges	Prison term	Community service, IDRC & Interlock
7 months– 1 year	\$300 - \$500 fine \$230 IDRC fee \$100 to drunk driving fund \$100 to AERF \$1,000/year (for 3 years) surcharge \$75 to Neighborhood Services Fund	Up to 30 days	12 - 48 hours IDRC BAC 0.15% or greater: ignition interlock device during license suspension and 6 months - 1 year following restoration

N.J.S. 39:4-50 et seq. – DWI Provisions

Second offense

Offense	License loss	Fines, fees & surcharges	Prison term	Community service, IDRC & Interlock
2nd offense within 10 years	2 years	\$500 - \$1,000 fine \$280 IDRC fee \$100 to drunk driving fund \$100 to AERF \$1,000/year (for 3 years) surcharge \$75 to Neighborhood Services Fund	48 hours–90 days	30 days CS 12 - 48 hours IDRC Ignition interlock device during license suspension and 1-3 years following restoration

N.J.S. 39:4-50 et seq. – DWI Provisions

Third offense

Offense	License loss	Fines, fees & surcharges	Prison term	Community service, IDRC & Interlock
3rd offense within 10 years of 2nd offense	10 years	\$1,000 fine \$280 IDRC fee \$100 to drunk driving fund \$100 to AERF \$1,500/year (for 3 years) surcharge \$75 to Neighborhood Services Fund	180 days	Up to 90 days CS (can reduce period of imprisonment) 12 - 48 hours IDRC Ignition interlock device during license suspension and 1-3 years following restoration

N.J.S. 39:4-50 et seq. – DWI Provisions

Driving with a DUI suspension

License loss

Additional
1 - 2 years

Fines or surcharges

\$500 fine
\$250/year (for 3 years)
surcharge

Prison term

10 - 90 days

Failure to Install or Starting Vehicle Improperly (*N.J.S. 39:4-50.19*)

- Failure to install interlock or started by any means other than own blowing
 - 1 year suspension in addition to any other suspension
 - still applies to owned, leased or regularly operated by
- Starts improperly, tampers or circumvents, or knowingly rents, leases or lends non-IID vehicle to one ordered by court to install
 - DP offense

Federal Law that Impacts NJ

- The TEA-21 Restoration Act (7/22/98)
- Two new programs created to encourage states to enact and enforce
 - Open Container
 - Repeat Intoxicated Driver laws

Federal Law that Impacts NJ

- Percentage of a state's Federal-aid highway funding transferred to the state's Sec 402 highway safety program unless the state has
 - both laws in effect and
 - submitted a certification to NHTSA

Federal Law that Impacts NJ

- Funds transferred are to be used for one or more of the following
 - alcohol-impaired driving countermeasures
 - enforcement of laws prohibiting DWI
 - other related laws or regulations
 - hazard elimination activities eligible under 23 U.S.C. Section 152.

Federal Law that Impacts NJ

- If a state did not meet the requirements of both programs:
 - 10/2000 - 1-1/2% of the state's funding will be transferred for each law;
 - 10/2001 – 3%;
 - 10/2002 – 3%; and
 - Thereafter – 6% of funding.

Federal Regulatory Provisions

- To avoid the transfer of funds
- State must enact and enforce a law
- All repeat intoxicated drivers shall minimally:
 - license suspension of not less than one year
 - Be subject to either
 - impoundment of offender's vehicles during suspension
 - immobilization of each vehicle during the suspension;
or
 - installation of a State-approved IID on each vehicle at the conclusion of the license suspension

Federal Regulatory Provisions

- All repeat intoxicated drivers shall minimally:
 - Receive assessment of degree of alcohol abuse, and treatment as appropriate; and
 - Receive a mandatory sentence of
 - Not less than five days of imprisonment or 30 days of community service for a second offense; and
 - Not less than ten days of imprisonment or 60 days of community service for a third or subsequent offense.

Federal Regulatory Provisions

- All repeat intoxicated drivers shall minimally:
 - limited exceptions:
 - to impoundment/immobilization requirements to avoid undue hardship to any individual completely dependent on vehicle for the necessities of life (not offender)
 - to IID requirement to install on each of the offender's motor vehicles to avoid undue financial hardship if offender may not operate vehicle without IID;
 - may be issued only in accordance with a State law/regulation/binding policy directive (specific exceptions only, cannot result in unrestricted offender driving)

Who Supports Interlocks for First Offenders

- NHTSA (National Highway Traffic Safety Administration)
- CDC (Centers for Disease Control and Prevention)
- GHSA (Governors Highway Safety Association)
- TIRF (Traffic Injury Research Foundation)
- IIHS (Insurance Institute for Highway Safety)
- MADD (Mothers Against Drunk Driving)

Safety to the Motoring Public

- DWI a significant threat to public safety because of driver's impairment:
 - perception
 - cognition
 - attention
 - balance
 - coordination, and
 - other brain functions deemed necessary for the safe operation of a motor vehicle.

DWI Nationwide Statistics

- In 2008, 32% of all traffic-related deaths were the result of alcohol-related crashes
- 10.9% of drivers in fatal motor vehicle crashes were under the influence of alcohol or drugs (including medication)
- Every day, NHTSA statistics show approximately 32 people die in motor vehicle crashes involving an alcohol-impaired driver

DWI Nationwide Statistics

- Approximately 13,000 people are killed every year by a driver under the influence; about one person every 40 minutes
- In addition, a 2000 study estimated the cost of alcohol-related vehicle crashes at more than \$51 billion annually
- 93.6% of individuals 21 or older in US classified as drivers
 - 186 million

DWI Nationwide Statistics

- From 2006 – 2009, 13.2% of persons 16 and older drove under the influence of alcohol each year
 - 30.6 million
- There are 1.4 million DWI arrests per year
- One DWI arrest for every 139 licensed driver
 - 0.6% of all drivers
- Rates of DWI higher among drivers 16 to 25 (19.5%) than among those 26 or older (11.8%)
- Numbers remained largely stable for more than 20 years after a significant drop in late 1980s/early 1990s

Top 10 DWI States

- Minnesota
 - Nebraska
- North Dakota
- South Dakota
 - Wisconsin
- Connecticut
- Massachusetts
 - Rhode Island
- Montana
- Wyoming

Lowest 9 DWI States

- Alabama
- Kentucky
- Mississippi
- West Virginia
 - Idaho
- New Mexico
- New Jersey
- New York

State Statistics

- 47 states and DC provide for the use of IID
- IIDs mandatory, at least in some circumstances, in 31 states.
- As of January 2011, 12 states have made ignition interlocks mandatory or “highly incentivized” for all convicted DWI offenders, including first-time offenders

Nationwide

- Rate of usage when IIDs mandated or available is about 10%
 - some states suspension shortened if offender agrees to use interlock
- 212,300 ignition interlocks installed 2010
- 1.4 million DWI arrests in 2010
 - many eligible for ignition interlocks

First Offenders

- One-half to two-thirds of all DWI convictions are first-time offenders
- A common objection is that interlocks are not needed for first offenders
- The popular myth is that a first offender is someone who drove drunk once
- Studies show the average “first offender” may have driven drunk 87 times before being caught

State Statistics

- Up to 75% of drivers suspended for DWI continue to drive
- Many continue to drink and drive
- More than 10 evaluation studies demonstrate
 - Interlocks reduce recidivism from 50% to 90% for first time and repeat DWI offenders
 - average of 64%
- Reduced recidivism includes “hard core” offenders
 - those who repeatedly drive with high BACs
 - are resistant to changing this behavior

New Mexico

New Mexico's interlock program the only one that has undergone comprehensive analysis of its impact AND that has attained an interlock installation rate of 50% among convicted DWI offenders

GHSA National Interlock Summit

- In 2010 the Governors Highway Safety Association held a summit in Washington DC
- Most significant implementation concern for IIDs
 - relatively small number of offenders who actually install the interlock
- IID installation rates could be increased by incentivizing installation

GHSA National Interlock Summit

- Incentives could include:
 - shorter license revocation periods
 - reduction in other charges
 - providing serious sanctions for non-installation or non-participation in the interlock program
 - steep fees for non-installation
 - a choice of
 - installing the interlock
 - going to jail, or
 - house arrest for non-drivers

GHSA National Interlock Summit

- Incentives could include:
 - increasing availability of interlock vendors (mobile service centers)
 - compliance checks of offenders ordered to install IID
 - judicial hearing required for non-installation
 - state adoption of good interlock implementation practices
 - positive feedback to legislature re: IID program
 - insurance company incentives to offenders for interlock use

GHSA National Interlock Summit

In 2011 the GHSA will begin a three year research effort funded by NHTSA to determine the most effective elements in a model interlock program

Recidivism of Hardcore Offenders

- Five studies of hardcore or repeat DWI offenders revealed that interlocks were effective in reducing recidivism while the device was installed
 - EMT Group 1990; Popkin et al. 1992; Morse and Elliot 1992; Jones 1993; Weinrath 1997
- A Maryland random assignment study showed that interlock program participation reduced the risk of committing an alcohol traffic violation within the first year by 65%
 - Beck et al. 1999
- An Illinois study found similar results – offenders who used the interlock were 1/5 as likely to be arrested for a DWI during the first year compared to those without the device
 - Raub et al. 2003



Using the Device in Sentencing

- Impediments to the imposition of the alcohol interlock as a sanction include:
 - Appearance of harshness for first-time offenders and leniency for repeat offenders (Vanlaar 2005)
 - Concerns about the cost to offenders – however these devices cost less than \$3.00 per day (Robertson and Simpson 2003).
 - Concerns regarding the technological effectiveness of the device, complications surrounding its use, and the effort required to monitor offender compliance
 - Lack of knowledge about whether and to what extent the alcohol interlock is effective
 - Lack of current/comprehensive information and educational materials has resulted in decision-making based on out-dated information (Beirness 2001)



Compliance With Installation

Why are offenders non-compliant?

- The device is accompanied by inconvenience and embarrassment
- A long delay between a license suspension or revocation and eligibility for an interlock teaches them that they do not need a licence to drive
- They do not want to pay the costs associated with the device



Compliance with Device Post-Installation

- Once the device is installed, offenders often try to circumvent the interlock in the first few weeks by tampering with breath samples and attempt to electronically disengage the device
- Some offenders may drive a non-interlocked vehicle, however strong reductions in recidivism shown in research suggest this is infrequent behavior



Compliance with Device Post-Installation

- Research shows that attempts at tampering and circumvention decrease over time
- This is a result of offenders recognizing that such attempts are consistently detected
- The inclusion of sophisticated anti-circumvention features greatly reduces the likelihood that offenders will be successful in disabling, disconnecting, or bypassing the interlock in a way that is not detected



Predicting Future Offenses

- Research from studies in Alberta and Quebec suggests that a high rate of breath tests in excess of .02%, particularly in the early morning hours are a good predictor of DWI recidivism
 - Beirness and Marques 2004
- Research from an ongoing study in Alberta, Canada involving several million breath tests revealed that the rate of interlock warnings at low (.02% - .04%) BACs and failed tests above .04% were found to be predictive of future DWI offences
 - Marques et al. 2001



Predicting Future Offences

- Several variables, but primarily more prior DWIs and more interlock warnings/failures logged during the first 5 months of interlock usage predict more than 60% of repeat DWI violations, with a false positive rate of less than 10%

- Marques et al. 2001



Offenders' Opinions

- Most surveyed offenders are supportive of the device and report that it is effective in preventing them from driving impaired

– Beirness et al. 2007

- A study conducted in the UK found that many offenders credited the interlock for:
 - stopping them from driving drunk
 - reducing their drinking
 - invoking serious thought about their drinking habits
 - assisted in changing their drinking habits



Offenders' Opinions

- Two types of concerns are usually raised by offenders regarding the alcohol interlock:
 - The social aspects such as embarrassment, stigma, and frustration or inconvenience
 - Technical challenges such as long warm-up times, invalid samples, and the frequency of retests
 - 1/3 reported that the running retest requirement made driving more dangerous
 - Beirness et al. 2007



Offenders' Opinions

- According to a 2005 survey of more than 5,000 offenders in New Mexico
 - 87% agreed the interlock reduced driving after drinking
 - 85% agreed that interlocks were a fair sanction; and
 - 67% agreed all DWI offenders should have an interlock

- Roth 2005



Impact on Family

- The alcohol interlock affords the offender the ability to travel to and from work, run errands, and maintain financial stability and everyday functioning within the family unit
- According to findings from a pilot study in the UK, family members are generally supportive of the interlock as it provides reassurance that their spouse can contribute to the family and better control their drinking (Beirness et al. 2007)



Impact on Family

- Many families reported a positive change in drinking behavior as a result of the interlock's installation
 - Concern has been expressed upon the removal of the device as the obstacle to drunk driving is gone (Beirness et al. 2007)
- Overall, interlocks benefit families because offenders who install the device are not faced with the same transportation, financial, and familial consequences as their non-interlock counterparts



Impact on Family Members

- In order to avoid the alcohol interlock, an offender may suggest that the device may pose an inconvenience to family members, particularly in a single-vehicle family
- Research shows that family members generally agree that the inconvenience of using the alcohol interlock device is a preferred alternative to other sanctions (Beirness et al. 2007)
- Some families report that the alcohol interlock has had positive benefits for family life as a result of the offender's reduced drinking



Providing a Sufficient Breath Sample

- Some offenders may suggest they are unable to blow into the alcohol interlock device in order to avoid the sanction
- NHTSA specifications in the U.S. require a minimum of 1.5 litres of breath
- Canadian guidelines (2008) require a minimum value for breath volume is between 0.7 and 1.2 litres. The upper threshold for breath volume falls between 1.5 and 2.0 litres
- Offenders who suffer from asthma can provide a sufficient sample for testing and devices can be adjusted to require a reduced volume



Providing a Sufficient Breath Sample

- A U.S. study of more than 1,500 spirometer (lung capacity) tests found that approximately 2.5% of adults would be medically incapable of delivering an appropriate sample at this volume (Patten 2007)
- Offenders who have undergone a tracheotomy, have chronic pulmonary disease, or other severe breathing disorders may encounter difficulty providing a sufficient sample



Costs

- Some offenders suggest that they cannot afford the alcohol interlock device because of cost
- Alcohol interlock programs are generally user-pay
- The cost to offenders is approximately
 - \$100 to \$250 for installation
 - \$60 to \$90 per month for monitoring
- The daily cost of this sanction is \$3 to \$4
 - or the cost of a drink
 - which is well below the cost of other incapacitation systems such as incarceration or electronic monitoring.



Challenges in NJ

- Installation rates generally
- Monitoring
- First offender installation

Questions for Municipal Court Practice Section

- Frequency with which ignition interlock devices are required/ordered to be installed?
- Easy to avoid by claiming no vehicle or will not drive?
- Any monitoring done by court regarding the installation or operation of IID?

Questions for Municipal Court Practice Section

- Is ordering or installation of IIDs perceived to be effective (too soon to tell since the provisions of “Ricci’s law” are still working their way through the system)?
- Does imposition of lengthy suspension is perceived as having a deterrent effect – either for offenders or for the broader population?
- Do municipal court judges receive training or information regarding IIDs (costs, features, impacts, etc.)?

Questions for Municipal Court Practice Section

- Role of municipal court, if any, at the time a defendant seeks restoration of license?
- Requirements imposed by MVC on restoration of license?
- Any changes noted in response to implementation of “Ricci’s law?”
- Support for imposition on first offenders generally?

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Credits - Resources

- Traffic Injury Research Foundation (TIRF)
- Substance Abuse and Mental Health Services Administration, Center for Behavioral Health Statistics and Quality, *Arrests for Driving Under the Influence among Adult Drivers* (September 2005)
- Substance Abuse and Mental Health Services Administration, Center for Behavioral Health Statistics and Quality, *State Estimates of Drunk and Drugged Driving* (December 2010)
- *Advancing Ignition Interlocks* <http://www.officer.com/print/Law-Enforcement-Technology/Advancing-ignition-interlocks/154246> last visited January 18, 2011)
- Department of Transportation, National Highway Traffic Safety Administration, *Ignition Interlocks – What You Need to Know: a Toolkit for Policymakers, Highway Safety Professionals and Advocates* (November 2009)
- *National Conference of State Legislatures, Survey of Drunk Driving Laws*, <http://www.ncsl.org> (last visited January 10, 2011)
- GHSA National IID summit (11/2010)
- Department of Transportation, National Highway Traffic Safety Administration, *Key Features for Ignition Interlock Programs* (March 2010)
- *Governors Highway Safety Association, States Warn Drunk Drivers: Over the Limit, Under Arrest*, <http://www.ghsa.org>, (last visited January 6, 2011)



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