



Driving on the Right Side of the Road Ignition Interlock Devices



JUST THE FACTS

Nationally:

- An Ignition Interlock Device (IID) is a device designed to prevent a car from starting when the driver has consumed too much alcohol. IIDs are exceedingly effective in limiting recidivism among DUI offenders.
- Drivers are generally considered to be alcohol-intoxicated when their blood-alcohol concentration (BAC) is .08 grams per deciliter (g/dL) or higher.¹
- Any fatal crash involving a driver with a BAC of .08 or higher is considered to be an alcohol-impaired driving crash.²
- In 2010, 5,189 passenger vehicle drivers killed had a BAC of .08 or higher.³
- Drivers with a BAC of .08 or higher involved in fatal crashes were four times more likely to have a prior conviction for driving while impaired than were drivers with no alcohol.⁴
- An average of one alcohol-impaired-driving fatality occurred every 51 minutes in 2010.⁵
- In 2010, a total of 1,210 children age 14 and younger were killed in motor vehicle crashes.⁶
 - Of those 1,210 fatalities, 211 (17%) occurred in alcohol-impaired driving crashes.⁷

Drivers Involved in Fatal Crashes by BAC of the Driver, 2010⁸

*Includes fatalities in crashes in which there was no driver present.

State	Total Drivers Involved	BAC=.00		BAC=.01-.07		BAC=.08+		BAC=.01+	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent
Texas	4,117	2,676	65	204	5	1,238	30	1,441	35
U.S. Total	44,440	33,008	74	1,739	4	9,694	22	11,432	26

In Texas:

- In 2011, 163 juveniles and 87,481 adults were arrested in Texas for DUIs.⁹
- Approximately every 20 minutes, someone in Texas is injured or killed in a traffic crash involving alcohol.¹⁰
 - In 2010, there were 25,032 alcohol-related crashes in Texas that resulted in 1,057 deaths and 16,877 injuries.¹¹
 - In 2010, 34.9% of the total traffic fatalities in Texas were caused by drivers under the influence of alcohol.¹²

Ignition Interlock Devices Explained:

- Ignition Interlock Devices (IID) help reduce offenses involving drinking and driving by separating the acts of drinking and driving.
- An Ignition Interlock Device is a small breath alcohol detector (about the size of a cell phone) that is attached to the car's ignition to check the driver's blood alcohol content.
- A driver must blow a clean breath sample in order to start the car.
 - If the alcohol concentration meets or exceeds the startup set point on the interlock device, the motor vehicle engine will not start.
- After the engine has been started, the IID will, at random intervals, require another breath sample.
 - If the breath sample is not provided or the sample exceeds the ignition interlock's preset blood alcohol level, the device will log the event, warn the driver, and then start an alarm (lights flashing, horn honking, etc.) until the ignition is turned off.

- The IID will not simply turn off the engine if alcohol is detected because that would create an unsafe driving situation.

Adapted from *DUI Foundation Financial Cost*,¹³ *Texas Ignition Interlock Device Regulations*,¹⁴ *Texas Ignition Interlock Laws*,¹⁵ and *Ignition Interlock Devices*.¹⁶

IT'S THE LAW

- Policy makers have recently made the reduction of alcohol related crashes and fatalities a priority. In 2010, all 50 states, the District of Columbia, and Puerto Rico had by law created a threshold making it illegal to drive with a BAC of .08 or higher.¹⁷
- Texas law provides that a person commits an offense if the person is intoxicated while operating a motor vehicle in a public place.¹⁸ The term "intoxicated" is defined as:
 - Not having the normal use of mental or physical faculties by reason of the introduction of alcohol, a controlled substance, a drug, a dangerous drug, a combination of two or more of those substances, or any other substance into the body; or
 - Having a blood alcohol concentration of 0.08 or more.¹⁹
- Texas makes installation of an ignition interlock device mandatory upon conviction for certain types of DWI or drunk-driving offenses. Current state law requires magistrates to order defendants charged with a subsequent DWI to install an IID unless the magistrate finds that the installation of an IID "would not be in the best interest of justice."²⁰ Defendants subject to a magistrate's order to install an IID are further ordered not to operate any motor vehicle unless the vehicle is equipped with an IID.²¹

<p>Penal Code - Section 49.09. Enhanced Offenses and Penalties</p>	<p>Applies to persons convicted of a second and subsequent offense relating to a DWI committed within 5 years, the court shall require the installation of an ignition interlock device. The court shall require the defendant to obtain the device on or before the ending date of the suspension and the device is to remain installed on each vehicle until the first anniversary of that ending date. Failure to comply is punishable by contempt.</p>
<p>Code of Criminal Procedure, Chapter 17.441, Conditions Requiring Motor Vehicle Ignition Interlock.</p>	<p>A magistrate shall require an Ignition Interlock as a condition of bond for a second or subsequent offense under § 49.04 - 49.06, Penal Code, or an offense under § 49.07 or 49.08 of that Code. It must be installed at the defendant's expense, before the 30th day after released on bond.</p>
<p>Code of Criminal Procedure, Chapter 17.441 (d)</p>	<p>A magistrate may designate an appropriate agency to verify installation of the device and to monitor the device (typically probation or pre-trial services, is the agency that collects and administers the fee). A magistrate may order payment of a monthly monitoring and verification fee set by the auditor, or if the county does not have one, then by commissioner's court of not more than \$10.00.</p>

<p>Transportation Code, Section 521.246, Ignition Interlock Device Requirement</p>	<p>The court may restrict a person to the operation of a motor vehicle equipped with an interlock if the Judge determines that the person’s license has been suspended following a conviction under § 49.04, 49.07, or 49.80, Penal Code, the Judge shall restrict the person to the operation of an interlock if the judge determines the person has two or more convictions under any combination of § 49.04, 49.07 or 49.08., a previous conviction may not be used if the offense was not committed within 10 years before the date on which the instant offense for which the person was convicted.</p>
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<p>Penal Code,²² Section 49.09(g), Section 521.241 et seq.</p>	<p>For second or subsequent offenses or >.15 B.A.C.: The court must order offender to install ignition interlock devices on all of the motor vehicles he or she owns for 1 year following a period of license suspension. When applying for an occupational license, the court may require a first offender and must require subsequent offenders within 10 years to only operate vehicles that are equipped with ignition interlock devices.</p>
<p>Code of Criminal Procedure,²³ Article 42.12</p>	<p>Unless the interests of justice indicate otherwise, a magistrate shall require an offender (Intoxicated Assault, Intoxicated Manslaughter or a subsequent DWI offense), after release from confinement, to only operate vehicles that are equipped with ignition interlock devices.</p>

The Magistrate’s IID Order:

- (1) When the magistrate orders the defendant to install an IID, the magistrate’s order must require the defendant to install an IID (at his or her own expense) within 30 days of release on bail. The order must also require that the accused may not operate any motor vehicle unless it is equipped with an IID.

- (2) If the magistrate finds that an IID is not required because it is not in the best interest of justice, the magistrate should make a written order stating the reasons for excusing the accused from the IID requirement. For example, economic hardship and health reasons may justify lifting the IID requirement.
- (3) If the defendant fails to comply with the magistrate's order, the magistrate may revoke the bond upon finding by a preponderance of the evidence that the defendant violated the conditions of the bond.²⁴

Texas laws requiring the installation of IIDs have been challenged as unconstitutional. The Fort Worth Court of Appeals, however, upheld the IID requirement, finding:

The interlock device serves the narrow governmental purpose of assuring that such persons not drive an automobile after they have consumed alcohol. See *Ex parte Tharp*, 912 S.W.2d 887, 890 (Tex. App. Fort Worth 1995), *aff'd*, 935 S.W.2d 157 (Tex. Crim. App. 1996). Driving an automobile is a privilege, not a right. See *Naff v. State*, 946 S.W.2d 529 (Tex. App. Fort Worth 1997); *Texas Dep't of Pub. Safety v. Schaejbe*, 687 S.W.2d 727, 728 (Tex. 1985); *Ex parte Tharp*, 912 S.W.2d at 890. The revocation of licenses and privileges in general have traditionally not been found to be punitive in nature. See *Ex parte Tharp*, 912 S.W.2d at 891. Accordingly, the requirement of an interlock device, which is less severe infringement on the privilege to driving an automobile, does not constitute punishment and is not oppressive.²⁵

Finally, the magistrate's order requiring an IID does not trigger the bar against double jeopardy when the defendant is prosecuted on the charge of driving while intoxicated.

Monitoring the IID:

- (1) The magistrate is empowered to designate an appropriate agency to monitor the installation and operation of the IID. In practice, the monitoring function has been delegated to pre-trial services or the probation department. In some cases, the magistrate has assigned the monitoring function to members of the judge's staff.
- (2) The monitoring function is critical to an effective program of reducing drunk driving through the use of IIDs. The defendant must provide a monthly report to a field office of the IID vendor company. The information regarding ignition attempts maintained by the IID is downloaded at that time. The report from the downloaded data is then reformatted and sent to the monitoring official. The IID monthly report is a listing of each start prevented by the IID, and it identifies the reason the start was prevented. For example, if the defendant registered a BAC over .03, the monthly report would state the BAC measurement, date, and time.
- (3) If the report indicates non-compliance, the monitoring officer might recommend the magistrate modify the bond to include alcohol/drug counseling, outpatient or inpatient treatment, or increased supervision of the defendant. Any action taken by the magistrate should be proportional to the extent of the non-compliance.

Cost:

- On average, an IID can cost an offender up to \$200 to install and \$80 in monthly maintenance and calibration fees.²⁶

State Approved Devices:

- The Department of Public Safety's Breath Alcohol Laboratory approves devices for use in Texas.²⁷
- Though each device has different features, they all share some important common features, including:
 - The ability to prevent the vehicle from being started if the device measures a BAC of over .03.
 - The ability to limit the driver to no more than 5 opportunities to start the vehicle within a short period of time.
 - The ability to prevent the vehicle from starting for a period of time if the driver fails multiple tests.
 - The ability to measure only ethanol alcohol.
 - The ability to maintain tamper-proof internal records of each attempted start that can be downloaded monthly and reported to the supervising court.

*Adapted from Magistrate's Duty to Order the Installation of Ignition Interlock Devices*²⁸

¹ National Highway Traffic Safety Administration, Traffic Safety Facts, 2010 Data, *Alcohol-Impaired Driving*, DOT HS 811 606, <http://www-nrd.nhtsa.dot.gov/Pubs/811606.pdf> (hereinafter referred as *Alcohol-Impaired Driving*).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ National Highway Traffic Safety Administration, Traffic Safety Facts, 2010 Data, *State Alcohol-Impaired Driving Estimates*, DOT HS 811 612, <http://www-nrd.nhtsa.dot.gov/Pubs/811612.pdf>.

⁹ Texas Department of Public Safety, *2011 Texas Arrest Data, Summary of Arrests*, retrieved on January 17, 2013, at <http://www.txdps.state.tx.us/crimereports/11/citCh9.pdf>.

¹⁰ Texas Department of Transportation, *Driving While Intoxicated (DWI)*, retrieved on January 17, 2013, at <http://www.txdot.gov/safety/tips/intoxication.htm>.

¹¹ Texas Department of Transportation, *Labor Day 2011 Drink. Drive. Go to Jail Campaign*, retrieved January 17, 2013, at http://ftp.dot.state.tx.us/pub/txdot-info/safety/labor_day/fact.pdf.

¹² *Id.*

¹³ DUI Foundation, *Financial Cost*, retrieved on January 17, 2013, at <http://www.duifoundation.org/support/financial/> (hereinafter *DUI Foundation*).

¹⁴ Texas Ignition Interlock Device Regulations, retrieved on January 17, 2013, at [http://info.sos.state.tx.us/pls/pub/readtac\\$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=37&pt=1&ch=19&rl=23](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=37&pt=1&ch=19&rl=23).

¹⁵ Texas Ignition Interlock Law, retrieved on January 17, 2013, at <http://www.interlock-devices.com/texas-ignition-interlock-laws/>.

¹⁶ Texas Department of Public Safety, *Ignition Interlock Devices*, retrieved on January 17, 2013, at <http://www.dps.texas.gov/DriverLicense/IgnitionInterlock.htm> (hereinafter referred as *Ignition Interlock Devices*).

¹⁷ See *Alcohol-Impaired Driving*.

¹⁸ Texas Penal Code §49.04(a).

¹⁹ Texas Penal Code §49.01(2).

²⁰ Texas Code of Criminal Procedure Art. 17.441(b).

²¹ Texas Code of Criminal Procedure Art. 17.441(a)(2).

²² National Conference of State Legislators, *State Ignition Interlock Laws* (updated May 2012), retrieved on January 17, 2013, at <http://www.ncsl.org/default.aspx?tabid=13558>.

²³ *Id.*

²⁴ Texas Code of Criminal Procedure, Art. 17.40.

²⁵ *Ex parte Kevin Elliott*, 950 S.W.2d 714, 717 (Tex. App. Fort Worth, 1997).

²⁶ See *DUI Foundation*.

²⁷ Texas Department of Public Safety, *Ignition Interlock*, retrieved on January 17, 2013, at <http://www.dps.texas.gov/RSD/IgnitionInterlock/index.htm>.

²⁸ Hon. John Vasquez, *Magistrate's Duty to Order the Installation of Ignition Interlock Devices*, MUNICIPAL COURT RECORDER, Vol. 15, Issue 3 (July 2006), <http://www.tmcec.com/public/files/File/The%20Recorder/2006/NL%20July%202006.pdf>.