



# Driving on the Right Side of the Road Ignition Interlock Devices



## JUST THE FACTS

### Alcohol-Impaired Driving Nationally

- An Ignition Interlock Device (IID) is a device designed to prevent a car from starting when the driver has consumed alcohol. IIDs are effective in preventing future alcohol-impaired driving.
- Drivers are generally considered to be legally intoxicated when their blood-alcohol concentration (BAC) is .08 grams per deciliter (g/dL) or higher.<sup>1</sup>
- In 2018, 6,364 passenger vehicle drivers killed had a BAC of .08 or higher.<sup>2</sup>
- 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.<sup>3</sup>
- An average of one alcohol-impaired driving fatality occurred every 50 minutes in 2018.<sup>4</sup>
- In 2018, a total of 1,038 children age 14 and younger were killed in motor vehicle crashes.<sup>5</sup> Of those fatalities, 231 (22%) occurred in alcohol-impaired driving crashes.<sup>6</sup>

Drivers Involved in Fatal Crashes by BAC of the Driver, 2018 <sup>7</sup>									
*Includes fatalities in crashes in which there was no driver present.									
State	Total Fatalities	BAC=.00		BAC=.01-.07		BAC=.08+		BAC=.01+	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent
Texas	3,642	1,965	54	1,673	46	1,439	40	974	27
U.S.	36,560	24,078	66	12,389	34	10,511	29	7,051	19

### Alcohol-Impaired Driving in Texas

- In 2018, 124 juveniles and 73,854 adults were arrested for impaired driving-related offenses.<sup>8</sup>
- Approximately every 20 minutes, someone in Texas is injured or killed in a traffic crash involving alcohol.<sup>9</sup>
  - In 2018, there were 82,550 alcohol-related crashes in Texas that resulted in 1,638 deaths and 62,393 injuries.<sup>10</sup>
  - In 2018, 26% of the total traffic fatalities in Texas involved drivers who had consumed alcohol.<sup>11</sup>

### IIDs Explained

- An IID is a small breath alcohol detector (about the size of a cell phone) that is attached to the car’s ignition to determine if the driver has recently consumer alcohol.
- A driver must blow an alcohol-free breath sample in order to start the car. If the alcohol concentration meets or exceed the startup point on the IID, the vehicle’s 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.

**IT'S THE LAW**

- In 2018, 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.<sup>16</sup> Utah's threshold was reduced to .05 in 2018.<sup>17</sup>
- Texas law provides that a person commits an offense if the person is intoxicated while operating a motor vehicle in a public place.<sup>18</sup> The term "intoxicated" is defined as:

- (1) *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*
- (2) *Having a blood alcohol concentration of 0.08 or more.*<sup>19</sup>

**Texas Ignition Interlock Statutes**

<p><b>Code of Criminal Procedure § 17.441</b> <b>Pre-Trial IID Requirements</b></p>	<p>A magistrate shall require an IID 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. 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><b>Code of Criminal Procedure, Article 42.12</b></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 an IID.</p>
<p><b>Transportation Code § 521.246</b> <b>Post-Conviction IID Requirements</b></p>	<p>If a person's license has been suspended following an impaired driving related conviction, the judge shall restrict the person to operating vehicles equipped with an IID for the duration of the suspension.</p>

<p><b>Penal Code § 49.09(h)</b>  <b>Enhanced Offenses and Penalties</b></p>	<p>For persons convicted of a second and subsequent offense relating to a DWI committed within 5 years, the court shall require the installation of an IID. 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><b>Penal Code § 49.09(g), § 521.241 et seq.</b>  <b>Enhanced Post-Conviction IID Requirements</b></p>	<p>For second or subsequent offenses or &gt;.15 B.A.C.: The court must order offender to install IIDs 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 IIDs.</p>

The Magistrate’s IID Order (Pre-Trial)—Special Considerations:

- (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. 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.<sup>20</sup>

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.<sup>21</sup>

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.<sup>22</sup>

## State Approved Devices

- The Department of Public Safety's Breath Alcohol Laboratory approves devices for use in Texas.<sup>23</sup>
- 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.*<sup>24</sup>

<sup>1</sup> National Highway Traffic Safety Administration, Traffic Safety Facts, 2018 Data, *Alcohol-Impaired Driving*, DOT HS 812 864, <http://www-nrd.nhtsa.dot.gov/Pubs/812864.pdf> (hereinafter referred as *Alcohol-Impaired Driving*).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Texas Department of Public Safety, *The Texas Crime Report for 2018 – Arrest Data*, retrieved on May 6, 2020, at

<https://www.dps.texas.gov/crimereports/18/citCh9.pdf>.

<sup>9</sup> Texas Department of Transportation, *Driving While Intoxicated (DWI)*, retrieved on April 8, 2020, at <http://www.txdot.gov/safety/tips/intoxication.htm>.

<sup>10</sup> See *Alcohol-Impaired Driving*.

<sup>11</sup> *Id.*

<sup>12</sup> DUI Foundation, *Financial Cost*, retrieved on April 8, 2020, at <http://www.duifoundation.org/support/financial/> (hereinafter *DUI Foundation*).

<sup>13</sup> Texas Ignition Interlock Device Regulations, retrieved on April 8, 2020, at <https://www.county.org/TAC/media/TACMedia/Education/State-of-Texas-Ignition-Interlock-Laws.pdf>.

<sup>14</sup> *State of Texas Ignition Interlock Laws: A Policy Evaluation 2018*, retrieved on January 17, 2013, at <http://www.interlock-devices.com/texas-ignition-interlock-laws/>.

<sup>15</sup> Texas Department of Public Safety, *Ignition Interlock Devices*, retrieved on April 8, 2020, at <http://www.dps.texas.gov/DriverLicense/IgnitionInterlock.htm> (hereinafter referred as *Ignition Interlock Devices*).

<sup>16</sup> See *Alcohol-Impaired Driving*.

<sup>17</sup> <https://www.npr.org/2018/12/26/679833767/utah-first-in-the-nation-to-lower-its-duc-limit-to-05-percent>

<sup>18</sup> Texas Penal Code §49.04(a).

<sup>19</sup> Texas Penal Code §49.01(2).

<sup>20</sup> Texas Code of Criminal Procedure, Art. 17.40.

<sup>21</sup> *Ex parte Kevin Elliott*, 950 S.W.2d 714, 717 (Tex. App. Fort Worth, 1997).

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<sup>22</sup> See *DUI Foundation*.

<sup>23</sup> Texas Department of Public Safety, *Ignition Interlock*, retrieved on April 8, 2020, at <http://www.dps.texas.gov/RSD/ignitionInterlock/index.htm>.

<sup>24</sup> 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>.