

MADD's Model Ignition Interlock Law Provisions

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MADD's Model Ignition Interlock Law Provisions

SECTION 1: Interlocks for every drunk driver as soon as possible

If such person has not had a prior DWI revocation, the person shall be only allowed to operate a motor vehicle if it is equipped with an approved ignition interlock device, and such person drives with the device for a **minimum period of six months with a first revocation**. Any drunk driver granted restricted driving privileges following a revocation, must have the license restricted to only operating a vehicle with an ignition interlock.

Any person restricted to operating an interlock equipped vehicle shall not have any geographic or time route restrictions. As part of a plea agreement for a drunk driving offense, a person shall not avoid the use an ignition interlock and use the device must be part of any plea or reduction of the original DUI charge. Any person required to use an ignition interlock must show proof of compliance with the interlock order before obtaining an unrestricted non-interlock license.

A restricted driving permit issued under this section shall not be granted to a person whose driving privilege was suspended or revoked for violating the DWI statute unless the department has proof that the person has an ignition interlock device installed on the motor vehicle owned by the person or on the vehicle most regularly driven by the person and that the person not operate any motor vehicle that is not equipped with that device. Upon proof of the installation of an ignition interlock device, no further time or location restrictions shall be placed on the person's driving permit arising solely from the violation of the DWI statute.

Drafters Note: There is no need for a hard license suspension period following a drunk driving arrest. The sooner a drunk driver is on an interlock device the better as up to 75 percent of drunk drivers drive illegally on a suspended license. Additionally, there is no need for a person on an interlock to have route or time restrictions associated with the use of the device.

SECTION 2: Require interlocks for all drunk drivers

The following time periods of interlock usage can be substituted for the first revocation where the offender has had multiple offenses, but they have not necessarily resulted in actual recorded convictions.

- 1st revocation: six months using an interlock-restricted license
- 2nd revocation: at least one year using an interlock-restricted license
- 3rd revocation: five years using an interlock-restricted license
- 4th or subsequent revocation: ten years using an interlock-restricted license

Section 3: No wait out of interlock period

If a functioning ignition interlock device is required to be installed, the minimum period of mandated use and applicable periods required to be violation-free are applicable for all persons regardless of whether the person applies for a restricted license. If the person elects not to operate a motor vehicle during the period of license revocation and applies for reinstatement of the license at the end of the revocation period, the department shall not reinstate the license until the person shows the department proof of ignition interlock installation. Upon proof being shown and the driver license reinstated, the required usage period shall commence on the date the license is reinstated.

SECTION 4: Interlocks part of any plea agreement or reduction in sentence

A first-time apprehended drunk driver who did not cause an injury or property damage crash, and successfully completes six continuous months on an ignition interlock and completes other court or department conditions can be granted a plea deal, non-disclosure clearing or sealing the person's drunk driving offense. If the person reoffends, the second offense should count as a second offense.

A judge granting deferred adjudication [diversion] to a person for a DWI shall require that the individual as a condition of participation in the deferred adjudication program have an ignition interlock device installed on the motor vehicle owned by the person or on the vehicle most regularly driven by the person and that the person not operate any motor vehicle that is not equipped with that device. This requirement applies regardless of whether the person would be required to have an ignition interlock device installed on conviction of the offense for which deferred adjudication is granted.

Where the complaint or information alleges a violation of DWI, any plea of guilty entered in satisfaction of the charges shall include a plea of guilty to the violation of the DWI statute, and no other disposition by plea of guilty to any other charge in satisfaction of the charge shall be authorized if the results of a test performed disclose that the blood or breath of the person charged contains an alcohol concentration of eight one hundredths or more.

Drafters Note: "Non-Disclosure" means the drunk driving offense would be removed from their criminal record. However, the legislation should be drafted to ensure that a second drunk driving offense following a first-time offense would be prosecuted as a second offense. Only offenders who do not cause injury or property damage can apply for the one-time non-disclosure. "Six continuous months" means that an offender must not have a recordable violation as noted in Section 4 on compliance based removal.

Section 5: Compliance Based Removal

Requirements for removal. A restriction imposed shall remain in effect until the department receives a declaration from the person's ignition interlock device vendor, in a form provided or approved by the department, certifying that there have been none of the following incidents in the one hundred eighty consecutive days prior to the date of release:

- a. Any attempt to start the vehicle with a breath alcohol concentration of 0.04 or more unless a subsequent test performed within ten minutes registers a breath alcohol concentration lower than 0.04 and the digital image confirms the same person provided both samples;
- b. Failure to take any random test unless a review of the digital image confirms that the vehicle was not occupied by the driver at the time of the missed test;
- c. Failure to pass any random retest with a breath alcohol concentration of 0.025 or lower unless a subsequent test performed within ten minutes registers a breath alcohol concentration lower than 0.025, and the digital image confirms the same person provided both samples; or
- d. Failure of the person to appear at the ignition interlock device vendor when required for maintenance, repair, calibration, monitoring, inspection, or replacement of the device.

SECTION 6: Require interlock for refusing a chemical test.

Any person for whom there is probable cause to believe was driving under the influence and refuses to submit to a blood or breath test, must use an ignition interlock device for a minimum of one year as a condition to maintaining a valid driver's license."

SECTION 7: Allow arrested offender the option to go on interlock sooner if they waive their Administrative License Revocation (ALR) Hearing, day for day credit for interlock installation.

On behalf of the director, the arresting peace officer submitting a sworn report under this section shall serve notice of the revocation on the arrested person, and the revocation shall be effective fifteen days after the date of arrest. The notice of revocation shall contain a statement explaining the operation of the administrative license revocation procedure. The peace officer shall also provide to the arrested person information prepared and approved by the director describing how to request an administrative license revocation hearing or apply for an ignition interlock permit from the department. A petition for an administrative license revocation hearing must be completed and delivered to the department or postmarked within ten days after the person's arrest or the person's right to an administrative license revocation hearing to contest the revocation will be foreclosed. The director shall prepare and approve the information form, the application for an ignition interlock permit, and the notice of revocation and shall provide them to law enforcement agencies.

Any arrested person who submits an application for an ignition interlock permit in lieu of a petition for an administrative license revocation hearing regarding the revocation of his or her operator's license pursuant to this section shall complete the application for an ignition interlock permit in which such person acknowledges that he or she understands that he or she will have his or her license administratively revoked pursuant to this section, that he or she waives his or her right to a hearing to contest the revocation, and that he or she understands that he or she is required to have an ignition interlock permit in order to operate a motor

vehicle for the period of the revocation and shall include sufficient evidence that an ignition interlock device is installed on one or more vehicles that will be operated by the arrested person. Upon the arrested person's completion of the ignition interlock permit application process, the department shall issue the person an ignition interlock permit, subject to any applicable requirements and any applicable no-drive period if the person is otherwise eligible.

Day for day credit. An arrested person who is issued an ignition interlock permit pursuant to this section shall receive day-for-day credit for the period he or she has a valid ignition interlock permit against the license revocation period imposed by the court arising from the same incident.

If a person files a completed application for an ignition interlock permit, the person waives his or her right to contest the revocation of his or her operator's license.

Any person who has not petitioned for an administrative license revocation hearing and is subject to an administrative license revocation may immediately apply for an ignition interlock permit to use during the applicable period of revocation, subject to the following additional restrictions:

- a) If such person submitted to a chemical test which disclosed the presence of a concentration of alcohol and has no prior administrative license revocations at the time the order of revocation is issued, the ignition interlock permit will be immediately available fifteen days after the date of arrest or the date notice of revocation was provided to the arrested person, as long as he or she is otherwise eligible for an ignition interlock permit, upon completion of an application process for an ignition interlock permit;
- b) If such person submitted to a chemical test which disclosed the presence of a concentration of alcohol and has one or more prior administrative license revocations on which final orders have been issued, the ignition interlock permit will be available beginning fifteen days after the date of arrest or the date notice of revocation was provided to the arrested person, as long as he or she is otherwise eligible for an ignition interlock permit, upon completion of an application process for an ignition interlock permit;
- c) If such person refused to submit to a chemical test of blood, breath, or urine as required by, the ignition interlock permit will be available beginning fifteen days after the date of arrest, as long as he or she is otherwise eligible for an ignition interlock permit, upon completion of an application process for an ignition interlock permit; and
- d) Any person who petitions for an administrative license revocation hearing shall not be eligible for an ignition interlock permit unless ordered by the court at the time of sentencing for the related criminal proceeding.”

SECTION 8: Drunk drivers should pay for the ignition interlock.

The costs incurred in order to comply with the ignition interlock requirements shall be paid by the person ordered to install an ignition interlock device unless the Court or department has determined the person to be indigent.

SECTION 9: Charge an administrative fee that allows the Department of Motor Vehicles to hire additional employees to administer the interlock program.

A person ordered to install an ignition interlock device or who installs the device as a condition of a revoked or suspended license shall pay an ignition interlock administrative fee unless the court or department has determined the defendant to be indigent. The DMV shall establish the fee, of at least thirty dollars and not exceeding One-Hundred dollars. The fee shall be collected at time of installation by the vendor installing the ignition interlock device. The vendor shall remit the fees to the DMV on a quarterly basis. A percentage of the fees shall go towards paying the DMV's costs to administer the interlock program; a percentage of the fees shall go towards other government agencies implementing the interlock program.

Section 10: Affordability program to offset cost of device for users unable to afford the device

Persons applying for indigency status for the purpose of the ignition interlock program shall be deemed to qualify for such status by showing proof of enrollment in any of the following public assistance programs:

- Temporary Assistance for Needy Families (TANF)
- Supplemental Security Income (SSI)
- Supplemental Nutritional Assistance Program (SNAP)
- Low Income Home Energy Assistance Program (LIHEAP)
- OR, if a person's family income is at or below 150 percent of the federal poverty level as documented.

Persons meeting this standard shall receive free installation of the device, free de-installation of the device and a 50% discount on the monthly device lease rate charged to non-indigent program participants. Persons meeting the affordability standard shall not receive a discount for charges associated with violating the program rules. A person that does not remain compliant, forgoes, their affordability status. The Manufacturer may, inquire every 6 months, while the person is on the Interlock program, to determine a change in financial status of the offender.

The Certified Interlock Manufacturer is required to provide information about the Affordability program, to all customers at the time of Appointment, and at the time the customer completes their lease paperwork as a customer.

The State is required to provide information on their program website informing Interlock customers about the Affordability program and how they qualify and apply.

SECTION 11: Penalties for tampering, circumventing, or failure to install the interlock.

Any person restricted to operating a motor vehicle equipped with an ignition interlock device who operates a vehicle without using such device or who tampers with or alters the interlock device in any way shall be punished with a felony and additional time using an ignition interlock device as a condition to getting his or her unrestricted driver's license reinstated.

Ignition interlock device tampering; failure to install. No person may remove, disconnect, tamper with, or otherwise circumvent the operation of an ignition interlock device installed in response to the court or administrative order. No person may fail to have the ignition interlock device installed as ordered by the court or Department of Motor Vehicles before being granted unrestricted driving privileges. Any person restricted to operating a motor vehicle equipped with an ignition interlock device who violates this section shall be charged with a misdemeanor. This section does not apply to the removal of an ignition interlock device upon the expiration of the order requiring the motor vehicle to be so equipped or to necessary repairs to a malfunctioning ignition interlock device by a person authorized by the department.

SECTION 12: Hybrid Judicial and DMV interlock program.

Authority to administer the Ignition Interlock Program should be vested with a state's Department of Motor Vehicles in conjunction with a state's judiciary. The Department of Motor Vehicles should set regulations for the Ignition Interlock Program. These regulations include ensuring the presence of licensed interlock providers within the state, requiring use of the most modern anti-circumvention fuel cell technology interlock systems, device equipped with cameras to verify the identity of the interlock user, and maintaining reporting systems for those sentenced to use interlocks.

In order to be granted interlock driving privileges, an offender must provide proof of interlock installation in a form approved by the state from an interlock vendor. If a judge fails to order an ignition interlock for a drunk driver, the Department of Motor Vehicles should not grant unrestricted driving privileges to a drunk driver until the offender provides proof of completion of the state's ignition interlock program requirements.

SECTION 13: Require lengthier interlock sentences for those who commit a DWI with a child in their vehicle.

Any person who drives under the influence while transporting a person under 16 years of age in his or her vehicle will be required to drive with an ignition interlock device for a minimum of six additional months above the period ordinarily prescribed for his or her drunk driving revocation.

Section 14: Underserved areas and remote breath testing devices

An unsupervised mobile breath testing device with the ability to confirm the identity, location and presence of alcohol in a person and is capable of scheduled, random and on demand tests that provide immediate, or as requested, results to a participating agency.

In order to provide service state-wide and in underserved areas, the (insert oversight agency) shall monitor the installation locations of manufacturers throughout (name of state). Further, the (insert oversight agency) shall promulgate administrative regulations to define a manufacturer selection process that is fair to all manufacturers. If the (insert oversight agency) determines that any place in (state) is not within 50 miles of an installation site, the (insert oversight agency) shall randomly select one of the certified manufacturers, using the administrative process, and require that Interlock manufacturer to establish an installation site in such area. If a second or subsequent area of (insert state) is determined not to be within 50 miles of an installation site, the (insert oversight agency) shall randomly select an interlock manufacturer, using the administrative process *and* other than the one selected previously, and require that interlock manufacturer to establish an installation site in such underserved area. As a condition of being certified by the (insert oversight agency), manufacturers must agree to take assignments to underserved areas.”

The (insert oversight agency) shall monitor the locations of providers and promulgate administrative regulations to create a random or designated selection process to require a vendor to provide services in any area of the state in which the (insert oversight agency) determines is underserved by providers. As a condition of being certified by the (insert oversight agency), providers must agree to take assignments to unserved areas.

Section 15: Limited judicial opt-out

A Judge may waive the requirement of an ignition interlock where the judge determines that requiring an interlock is not necessary for the safety of the community and in the best interest of justice, and the Judge must enter the finding on the record of the court.