

House Bill 1219
Testimony of Darrel L. Longest in Support
8115 Exodus Drive
Laytonsville, Maryland 20877
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Although I am an interlock industry participant, I am also a former prosecutor and trial attorney with over 26 years of experience in the field of alcohol and drug related driving problems in the US, and 10 years of experience with interlock programs. I have testified extensively and participated over the past 7 years in federal, state, and local bodies on the issue of the use of ignition interlock devices, and the implementation of interlock programs in the US in both administrative and judicial programs (the pending Bill would be considered a judicial interlock bill). I am also a member of the Board of Directors of the National Commission Against Drunk Driving (NCADD), which is the multi-disciplinary non-profit organization in the US that performs oversight on the nation's drinking and driving problem and solutions to it. NCADD has also endorsed the use of interlocks in the fashion contemplated by this Bill.

Although a number of studies and papers have been written about the effectiveness of interlock programs and the justification for them, little has been written about the form they should take to achieve maximum benefit from such programs. The most recent of these presentations is one that I was asked to present on April 28, 1999, before the Australasian Conference on Drug Strategy in Adelaide.

A copy of that paper is attached to this testimony, and incorporated by reference. Although it is clear that additional research will show us the optimum interlock term to impose, I believe that the numerous citations support the conclusions that I would have you draw from what you hear during the hearings on this bill:

1. Ignition interlock programs, when combined with treatment and probation, create the single most effective method known to reduce recidivism amongst problem drinkers who are convicted of alcohol-related driving offenses; interlock terms should not be less than 12 months in duration (longer for multiple offenders), and should be supported with treatment.
2. Ignition interlock statutes exist in 39 states now, and are supported by MADD-National, law enforcement, courts, probation, treatment, DMV administrators, NHTSA, and all traffic safety related organizations as an effective means of controlling recidivism.
3. Interlock programs are an affordable means of protecting the public and helping the offender to be rehabilitated and be a stable and employed member of his community.
4. Interlock programs, if properly implemented, will cost the state nothing, and will return a substantial reward in reduced caseloads, arrests, lives, and injuries from alcohol-related crashes.
5. Pennsylvania should adopt this bill, which provides another tool in the fight against drinking and driving, and has been proved to be exceptionally effective in doing so.

*Judicial and Administrative Ignition Interlock
Programs in the United States*

Presented to

The Australasian Conference on Drug Strategy

Adelaide, Australia
April 28, 1999

by

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Administrative and Judicial Ignition Interlocks in the US

by Darrel L. Longest, JD

Abstract

Breath Alcohol Ignition Interlock Devices (the "Breathalyzer® in the car") have become an attractive and functional tool in the fight against drunk driving in the United States and Canada. Their commercial presence in the field for nearly 10 years has created a number of anecdotal reports about their effectiveness. More recently, a number of well-done research projects have shown statistically that interlocks are an effective deterrent against drink driving universally, substantially reducing recidivism rates amongst offenders.

This presentation describes the differing 37 United States interlock programs as of December 1998. From administrative to judicial in form, and from discretionary to mandatory in practice, the differing formats of programs are discussed. The author identifies the strengths and weaknesses of each type program and makes recommendations for the development of drunk driving interlock legislation, rules, and practices that encompass the best of present programs, as well as recommendations for the development of future interlock programs.

This paper does not rehash the nature of the drunk driving problem, its offenders, nor its size or impact. Rather, it describes a practical implementation program for what has now become a proven modern-day technological solution to help fight drunk driving.

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**Administrative and Judicial Ignition Interlock Programs
in the United States**

Presented by
Darrel L. Longest, JD, CEO
Life Sciences Corporation
to the Australasian Conference on Drug Strategy
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April 28, 1999

Introduction:

The world of the drinking driver has been difficult for government, treatment professionals, law enforcement, the courts, probation, and families to define – and even harder to control. For nearly as long as we have had motorized vehicles, there has been a propensity to combine them with alcohol, with consistently devastating effects.

The past 30 years have provided us with a permanent fixture in this arena. He¹ is described as the driver with an alcohol problem, a non-social drinker, the hardcore drinking driver, and the persistent drinking driver. Victims of drunk driving crashes call them by other names – left to your imagination. Under anybody's definition, the drinking driver is a true menace on the road, a danger to himself and others, and someone whose behavior we have trouble controlling, despite all the millions of dollars spent by each jurisdiction to correct his problem. Clearly, the public is anxiously looking for a solution to the danger this driver represents.

Why we have such a problem with these drivers is important to the principles set out in this paper. For over 40 years, many have concluded that only treatment could have a permanent effect on these offenders, but treatment is often hard to impose, and is perceived by some as a DUI penalty all-too-often not thought by courts to be needed. At the very least, many judges appear disposed to provide individual dispositions for these offenders, believing them to need such individual attention. Unfortunately, courts often fail to require complete assessments that will help to define the problem offenders, and then fail to adequately follow-up their sentencing decisions for a long enough period to have any real chance of impacting their driving behavior. In too many cases resulting in highway crashes with injuries or even death, a court or other agency has had the opportunity to detect this offender's basic alcohol problem, and do something to prevent it from happening again, but continue to define sentencing alternatives and options that do not track and monitor offenders for a period long enough to make a difference. They too often rely on virtually none of the new technology to help do this work, and fail to benefit from its use.

¹ In over 70% of the cases, this offender is a male.

Victims, law enforcement, and sometimes legislators often consider this "system failure" to be "getting soft on DUI," a term commonly heard in the US from highway safety groups. Unfortunately, despite the complaints, resources are not always put directly where they are needed to have a major impact. The public is simply not willing to spend enough money on this offender to make a difference, whether for his treatment, or his incarceration; and courts are often reluctant to take his driving privileges from him, fearing loss of work and the ability to support himself and his family. There are strong efforts in place to make him "pay his own way," and they are working for the states that have enforced that rule.

It is now clear that finding the appropriate disposition of a DUI case - in any country - is not a simple matter, and that there are issues facing each jurisdiction that make the process of handling a DUI case oftentimes very parochial in nature.

The parochial handling of such offenders is as much at the root of the problem in finding solutions to their behavior - especially for the multiple offender - as are the issues of their alcoholism, social or financial status, or the laws that might be applied to their case.

The US has few national laws that address the DUI problem. There is a national President's policy, but none that is enforceable, due to the parochial practice of letting the states pass and enforce their own driving laws. The National Highway Traffic Safety Administration (NHTSA) is trying hard to force changes on the states that will affect national road safety in many arenas, including DUIs. But a common response of the states is usually very much related to the belief that the federal government does not know what the local problems are, and courts are loath to give up the discretion that they have exercised for as long as people have been drinking and driving. Whether judges are actively involved in the legislative process or not, their positions on laws that will affect their discretion in DUI sentencing are well known.

This is not to say that the federal government is not interested in taking the lead in the fight against drinking and driving. Indeed, it is trying hard to force a 0.08% limit for DUI on all the states - by impacting their federal grant funds if they do not comply, and to provide for incentives in the form of generous federal grants if states develop certain defined programs to help fight drinking and driving, particularly for the multiple offender. The block they face is that traffic laws are generally seen as the province of the states, and the federal government does not have jurisdiction to tell the states what their penalties and sanctions will be for driving offenses (or any other offense, for that matter).

Some states have dealt with the increased federal demands only when they are accompanied by economic sanctions. This is tantamount to saying, for example, "...if you do not pass an '0.08%' BAC level for impaired, or require a certain time for the suspension of a DUI offender's license, then you will not receive certain highway funds this year."

Having spent over 25 years in the criminal justice system at the state level, I can tell you that the heritage of parochial approaches to DUI cases, and the insistence of the judiciary and the motor vehicle administrative authorities on having discretion to deal with these cases for criminal sanctions is well entrenched, and will be hard to dislodge. Rather, if we are going to change the way the states deal with the drinking driver, it will, for the present, have to be done by convincing them that change and new technology will help, but not remove their discretion in the process of helping.

This introduction has not been merely prologue to the presentation that follows. Were that the case, it would have been much shorter. Rather, it is a frank effort to describe the "systemic" problems that seem to tie our hands when trying to deal with drinking and driving. The vast press coverage, the yearly legislation and lobbying efforts, the extensive administrative rules, the comments by your friends and mine at gatherings, are all indicative of the frustration that society is having in dealing with this topic. It is also probably much of the reason that it is so parochial in its solutions.

What are the Traditional Solutions at Work in DUI Cases?

We have always dealt with the DUI problem by increased law enforcement, arrests, convictions (or guilty pleas), fines, some incarceration in the exacerbated cases, license suspension or revocation, treatment, and, often after a long period of license suspension, reinstatement of a driver's privilege to drive.² Because the problem is so vast and pervasive, we pour money into road blocks, random stops, increased ability to prosecute the additional cases, more judges, courtrooms, jails, and increased administrative functions to process the license suspensions, revocations, hearings and appeals.

Do these Traditional Sanctions Work?

Have they affected the outcome? The answer depends on how you measure success. If reduced deaths on the highway are the measure, then the sanctions have worked for a significant group, but have stalled. In a society that used to have over 50% of its highway deaths resulting from alcohol-related crashes, we have reduced that to 40% in the past 10 years.

² A continuing theme in this presentation starts here, and deserves statement early: the sanctions work for the otherwise compliant person - the person who has a fear of authority, and a respect for rule and order. Sanctions, however, do not work for the persistent, hard core, drinking driver, as he has spent enough time in the "system" to know that it will not affect his lifestyle for very long, if ever. He will be persistent in driving without a license, and with no insurance, counting on the leniency of the judicial system to not be too harsh with him. In the case of the multiple offender (perhaps 3 or more convictions later), he will have experienced the jail, fines, suspensions and treatment so often that he will have determined that "my need to drive is much greater than government's ability to tell me that I can't."

But if the yardstick is the number of repeat offenders, or the financial damage these drivers do, we have not solved the problem. We still have 31% of the 1.5 million people arrested each year who are repeat offenders, as late as 1996. If one is the victim of a multiple offender's next alcohol-related crash, we have not solved the problem at all, as he is expecting that no prior convicted person will be allowed to drive in a situation in which he continues to drink, whether his alcohol problem is solved or not. When that happens, we have too much of the public mystified at why it can occur, but seldom aware of the problems our systems have in preventing it.

What works to stop this DUI offender from recidivating, or from drinking and driving in the first place? Let's look more closely at the traditional deterrents for these cases that have been in place for the past 40 years. They give us good insight into why interlock programs are gaining such momentum in the US.

1. Arrest. It is often thought that arrest for a DUI is enough humiliation that a person would never want to go through it again. That is very true for a large number of people, but there are those for whom it is not any good reason to stop drinking and driving. The national rate of recidivism in the US is about 1/3rd, according to MADD-National.³ Arrest is an effective deterrent for those who fear authority, and the humiliation, fines, and penalties that come from arrest, but not for those who have already seen that authority will not deal with them – or their alcohol problem – for this, or any other DUI offense, until their problem is gone. Thus, the non-compliant personality will simply thumb his nose at the system, take his licks, and keep drinking and driving, unless he thinks there is really going to be in place a system that will track and monitor him, and “dog” him until his problem is solved; if it can't be solved, then for as long as he drives a car, there should be in place some means of monitoring him as a danger on the roads.
2. Prosecution: the court process; fines; sentences. I spent over 25 years in this tangled web, as a prosecutor for 5 years, and a private practitioner for over 20 years, dealing with the alcohol-related crime problem every day. It is a parochial system bent on dealing with offenders individually, and is very slow to change anything. Legitimately, law enforcement, courts, and prosecution authorities are often slow to embrace new technologies or systems until they have been well-proven, thinking that the court process is no place to “experiment” when liberties are at stake. The parochial nature of the system is seen in the conflict in the US between the federal and state authorities – at every level: federal police investigations are often seen as “intrusive” by the local police; state courts vie with the federal courts for jurisdiction over DUI cases; federal

³ Workshop on Feasibility of Electronic Driver's Licenses and Improved Highway Safety, Presentation for MADD (Mothers Against Drunk Driving) by Charles Babcock, Irvine, California, Sept. 21, 1998. See also, National DUI Trends, 3rd Annual Nevada DUI Conference, Sept. 9, 1998, Paul Snodgrass. See Also, *Traffic Safety Facts 1996 - Alcohol*, NHTSA, USDOT, Washington, DC, reporting a 31% national US recidivism rate.

courts have treatment programs that are not available in the state courts; federal probation has tools that are not available to many state authorities; and, most importantly, the federal authorities take some justified pride in enforcing a set of laws that are standard throughout the federal system, often involving mandatory sentencing guidelines, whereas the states have both statewide and local laws to enforce, with very few mandatory sentences required, especially in dealing with drinking drivers -- all embedded in a system that has different laws for DUI in every state. There is no doubt that this adds to the parochial flavor of local court judges when it comes to sentencing DUI cases, or any other case, for that matter. In some states, judges are elected, and tend to fear that their reputation for being tough on anything short of very serious crime will not let them get re-elected; others thrive on such reputations, but in neither case is there consistency in the disposition of the DUI cases. These cases are often not seen in some communities as a major criminal problem, and judges are reluctant to treat it any other way. Sometimes this comes across in the declaration of certain DUI cases as a felony, and some as misdemeanors. In either event, the seriousness of the problem does not appear as a serious, well defined, violation until a clear multiple offender problem develops, such as in the death of a carload of young people.

3. Probation, Treatment and Other Drug Abuse Programs. The fact that probation, treatment and other drug programs (such as MADD Victim Impact panels) can make a favorable change in the life of a DUI offender, while at the same time protect the safety of the public is either not recognized in many corners, or it simply does not have the public support that is required to make it work. I think it is more the latter attitude at work. The public is clearly not willing to pay for the lengthy probation and treatment that a DUI offender with a drinking problem may have. Until it happens to their family, it is not serious enough to address with taxpayer money. It is clear, however, especially in working with interlock programs, that treatment and probation is very effective. Later, we will address some of the successful programs. But until there is enough willingness in the public to either a) support them with money, or b) in the courts to require the offenders to support treatment with their own money, they will be seen as successful only in individual cases, and in very few major programs.⁴

⁴ The dichotomy in how various state courts view the responsibility to pay for treatment is amazing. In Maryland, seldom is there much required of the offender to pay for his treatment, for the courts are very sympathetic toward placing more financial burden on the offender than fines, costs, and lost wages if he is in jail for any time. The result is often a very short treatment program, mostly for "alcohol education," and seldom of any length that it will work effectively. In Virginia, however, just over the Potomac River, the courts always require the offender to pay his own way in the interlock program and in the Virginia Alcohol Safety Action Program, a mandatory treatment program for every conviction for a DUI in that state. In West Virginia, every conviction brings with it the mandate for a treatment program as a condition of re-licensure after suspension for a DUI. The fear by some judges and probation officers that too much financial burden is being placed on the offender in some states is replaced with the attitude that "it's his problem - he is the one caught in the DUI - if he has to pay for treatment, then that is

The answer to the question in this section is obvious: traditional sanctions work in the cases where the DUI offender is a compliant personality, and they fail in the cases where they are not. How do we know this? Let's look at some US statistics.⁵

1. Over 80% of all first time offenders have been found to be problem drinkers or alcoholics when evaluated.⁶
2. In most states, 75% of those with suspended licenses drive illegally (and usually uninsured).⁷
3. Drinking drivers in the US have driven while legally impaired between 200 and 2,000 times before being arrested for the first time.⁸
4. The average BAC on arrest in the US is 0.17%.⁹
5. Alcohol-related traffic deaths in the US are about 16,000 per year, or 40% of the total traffic-related deaths. In 1996, 17,126 people died in alcohol-related crashes in the US.¹⁰ (The goal of the partnership formed in the US by NHTSA, MADD, and other traffic safety advocacy groups, is to reduce highway deaths to 11,000 by 2005.)
6. The average DUI offender spends \$16.61 per day on alcohol before warranting arrest.¹¹

Given these basic statistics, there is little question as to why the national recidivism rate in the US is 31% each year.

just part of his problem solving." Clearly, the public supports the latter view, and is seldom aware that the "soft on DUI" attitude is really the "soft on the pocketbook" issue coming through.

⁵ A good source of DUI statistics in the US is found in the web site maintained by The Century Council, at www.duedata.org. Most of the data found there is accurate, but be cautious of interlock programming information reported, as it is not always accurate, such as identifying the real status of interlock protocols in each state. This is as much a result of the state officials not really knowing what is the protocol of their program as it is in the fact that they may not have anything in place but an enabling statute, which is of little value in establishing a statewide interlock program.

⁶ *Alcohol, Drugs and Traffic Safety, T92*, ed. Utzeiman/Berghause/Draj Verhag TUV Rheinland GM614, Kohn, 1993; *The Technology Solution to the Persistent Drinking Driver*, Collier and Longest, Washington, DC, 1997; *Judge Calls the Last Shot*, Kramer, J., Quincy, Mass., *Drunk Driving in America: Strategies and Approaches to Treatment*, the Haworth Press, Inc., 1986 (reported in *Traffic Safety Magazine*, March/April 1995).

⁷ Hamilton County Drinking and Driving Study, 30 Month Report, Feb. 190, p. 7

⁸ *Ignition Interlock Devices: an Assessment of their Application to Reduce DUI*, Linnell and Moak, Harmany Institute, Tollhouse, Calif., sponsored by the AAA Foundation for Traffic Safety, July, 1991, p. 4

⁹ NHTSA *Traffic Safety Facts*, National Center for Statistics & Analysis, Research & Development (1996).

¹⁰ AAA Foundation Report by Harmany Institute, p. 4., *Ibid.*

¹¹ Harris County, Houston Texas, SALSE Report.

What Can We Do About this Problem?

The trick in attacking this number is in developing a consensus plan – a good model – that will identify those problem drinkers who will be coming into the DUI system, and, after they enter, to deal with them effectively. If the point has not been made clearly enough, let me state it another way: without cooperation of the legislature, law enforcement, courts and prosecutors, and treatment personnel, and the appropriate use of technology to manage the set of people who meet the description of a problem drinker, we will not solve this problem, and we will have become stuck at our present plateau of success. That is not acceptable to most.

Who Are the Players, and What Are Their Interests?

Seen through the differing eyes that view the problem, the system of dealing with the DUI offender in the US looks like this:

From the first offender and the public: The police are either too lenient or too strict in conducting DUI stops and roadblocks, depending on where you live. The courts have dockets that are jammed with DUI cases (about 1.5 million per year) and have not enough time to deal with the individual problems as they come before them; the courts thus rubber stamp the “deals” made in the courthouse halls, and worry that they are not being too harsh on the offenders, while trying to balance the feelings of the victim in needing some retribution.

From the courts, probation, treatment, and private sector: The prosecutor is too lenient in plea bargaining, not paying enough attention to the victim, or to the offender’s need for rehabilitation. Courts can only deal with the information they are provided, and it is up to the rest of the criminal justice system to provide that information to them. Probation officers are overworked and understaffed and can not keep up with the volume of DUI offenders on a regular basis, so their behavior goes unnoticed. Treatment people know there are other assets available to fight the problem, but the courts and public do not put the money into it that it requires. They are reluctant to make the offender pay for it. The private sector, such as interlock service providers, wonders why the interlock programs, which are self-sustaining, cost on average \$2.00 per day, and are very effective, are not used more often.

From the press: Neither the courts, the prosecutor, nor treatment is solving the problem. But they report the sensational cases, when someone is killed, and seldom deal with the drudgery of investigative reporting to determine why the traditional solutions are not effective in stopping the multiple offenders, or why new programs and technologies are not being used effectively.

From the multiple offender: His need to drive is greater than government's ability to tell him that he can't. Thus, he displays an attitude that is characterized by "lets get on with the license suspension or revocation, the fines, the jail, the treatment, for I need to get out of here to drive to work to support myself and my family, with or without a license, and with or without insurance."

From John Q. Public: Why aren't you doing more to solve the problem? Despite my complaints, little is changing, more arrests are being made, but the rate of recidivism remains high, and we have not seriously reduced the death or injury tolls from DUI offenders in the past 10 years. And, by the way, don't spend my tax dollar solving someone's drinking problem.

The Coming-of-Age of Ignition Interlocks

It is from this set of situations that ignition interlocks have arrived on the scene – although not exactly galloping to the rescue; it's been more like a slow trot. Interlocks have been commercially available for over 10 years, with legislation in 37 US states (3 more are pending this spring), but there are less than 35,000 people on interlocks in the US at this time.¹² In fact, over 20,000 of those have come into the program within the past 2 years, which leaves a lot of years that interlocks were not used very often, whether they were known to be effective or not. The slowness of the criminal justice system to move and embrace technology was hard to turn around.

The first programs were isolated cases of judges using the early generation devices in their courts, without official sanction from the legislature, but as a part of their broad discretion to provide "reasonable conditions of probation." I am not aware of any court order that has been successfully challenged by saying that an order to use an interlock is not a "reasonable condition of probation." Indeed, in several states, the interlock statutes have been challenged, and always upheld. The most recent effort was in Texas, which uses interlocks as a mandatory condition of bail for a multiple offender upon arrest.¹³

What Are the Components of a Good Interlock Program?

There are two (2) important parts to a good interlock program; both have equal importance to the effective, smooth running interlock program:

- a. a properly manufactured, robust, alcohol-specific (not just ethanol specific) ISO-9000 reliable interlock, and

¹² A list of those states with interlock statutes, identified as judicial or administrative programs, is attached as Appendix I.

¹³ See *Ex Parte Elliot*, 950 S.W.2d 714 (Tex. App. 1997); Cf. *dictum* in *People v. Letterlough*, 86 N.Y.2d 259, 655 N.E.2d 146, 631 N.Y.S.2d 105, June 13, 1996.

- b. a good service provider system to provide installation, monitoring, calibration, repair, and reports to the authorities on a driver's behavior while away from his probation officer or treatment program. A properly constituted interlock program has a heavy demand for a service provider that knows what it is doing, and
- c. an information system that will automatically produce reports on a driver's interlock behavior, make timely reports to probation, courts and/or administrative personnel in a consistent, user-friendly environment.

The Interlock Device History. There is a claim made to the invention of the interlock by one Robert Smith in the 60's. However, the father of the modern interlock is known to be Dr. Donald Collier, formerly with Borg-Warner, who carried most of the patents on interlocks, which, for the most part, have now expired.¹⁴

The first commercially available interlock came from Guardian Interlock. That device, using a Taguchi ("T") cell for a sensor, is still manufactured. In fact, all the interlocks made until 1995 in the US were using a similar sensor. Their problem was, and is, that they are not specific to the detection of alcohol, and have been manufactured by companies that are not ISO-9000 certified. Their anti-circumvention tools are either too hard to use, or they are too easy to use, allowing access to the interlock by children. They would detect any hydrocarbon (cigarette smoke, carbon monoxide, gasoline, paint fumes, etc.), and prevent the starting of a car and report a false positive, as well as detecting alcohol. Indeed, only one product of the seven (7) that are now manufactured in the world has been made to such a standard, and only two products as of this writing appear to have been tested to the NHTSA specifications by an ISO-9000 certified lab.¹⁵

The state of the art in the industry now is a fuel cell device, manufactured and tested to an ISO-9000 standard, which is alcohol-specific.

¹⁴ The world of interlock patents has been marred by 2 lawsuits in the US District Court in Nashville, Tennessee, where a mighty battle occurred in 1997. The suit was withdrawn, but not before much of the uncertainty about the "T" Cell devices had become public knowledge. Neither of the parties to the suit manufactured an ISO-9000 standard device at that time.

¹⁵ NHTSA recognized in 1991 the need for specifications for interlocks to assure the public safety. In April, 1992, NHTSA published guidelines for the performance of interlocks in the Federal Register. Unfortunately, NHTSA did not set guidelines for the quality of the lab required to do the testing, so there has been a lot of "me too" amongst the manufacturers, saying that their device will perform as well as others, because some lab (not ISO-9000 certified) has said that it met the NHTSA specs. This is a serious problem that should be rectified by requiring that all interlock devices meet NHTSA (or other, more rigid) specs and be certified to that spec by an independent ISO-9000 lab. This will take virtually all the guesswork out of whether a device meets the standards or not, or at least give the government a reasonable expectation that it does meet those specs.

The Interlock Service Provider Industry. The interlock industry in the US has developed in a form that was born of necessity.

The selection of a device is a matter of testing and choosing what works best. Such is not the case with the Service Provider; that is a more difficult task. Manufacturers are not in the business of installing, servicing and monitoring their devices. They want to sell all the interlocks they can, and do not get involved in providing 24-hour service, which is a requirement in this industry. People with alcohol problems don't usually display those problems until after manufacturing hours are closed down.

As a result, the interlock service provider industry arose, starting about 1989, when manufacturers realized that they could make the devices, but could not deliver 24-hour care to the users of interlocks. Without such care, judges and administrators are naturally reluctant to leave a motorist in the position of being stranded due to a malfunctioning interlock device; likewise, if they find their car immobilized due to program violations (e.g., tampering or high BAC tests), they also need immediate care. Service providers in the more experienced jurisdictions are now certified as to location, personnel, qualifications, and competency to install, service, and monitor interlock devices.¹⁶ Criminal record checks on field technicians are commonplace in these more advanced state programs, and secure standards for delivering to officials the interlock reports, and their format, on violations of the interlock program are fairly rigid.¹⁷

¹⁶ Nevada, Colorado, Illinois, West Virginia, Michigan and Virginia all have established protocols for where locations of interlock service providers to make sure that all the population can be conveniently serviced (Maryland has some protocol proposals pending at this time). West Virginia and Virginia have sole-source contracts, meaning that they take competitive bids for the interlock service provider and deal only with one provider. This method of interlock programming offers the best opportunity to combine interlocks with courts, probation and treatment in a unified program. Dealing with multiple vendors in such a court-oriented program is not easy to coordinate, as different reporting formats and different devices produce inconsistent results for interlock users and those who receive the reports.

¹⁷ Virtually every one of the 37 states has some sort of interlock program protocol that controls the form of reports, the qualifications for approved service provider status, and the certification of devices that can be used. Those that don't have such protocols do not have effective programs. Those who have left the protocol issue to be decided by the competitive nature of the service provider industry have run afoul of the fact that the DUI offenders will flock to the equipment that does not work effectively (as they are hopeful that bad equipment will cause the court to allow them to get off the interlock), or the reporting system that will not catch all the positives and report it to the authorities. The lesson learned is simple: regulate and control the interlock service providers as you would regulate and control the devices that are authorized to be used in your program.

Although the debate amongst manufacturers and service providers in the "I can do that, too" war continues to rage, some basic traits of a good interlock program are very clear.¹⁸

1. The legislation that enables the use of interlocks, either permissive or mandatory, should be uniform for all the state, and set out the following:
 - a. who will be the agency that will set the device and service provider protocols
 - b. who will set the content and format for delivery of reports on driver behavior
 - c. who will enforce the device and service provider protocols
 - d. who will remove manufacturers or service providers who are not meeting the protocols

2. There must be a statewide standard that determines which interlock devices can be used in a state, and which can not. If the devices are not certified by an ISO-9000 laboratory to the state's requirements (which should be no less than those of NHTSA published in 1992), enhanced by the requirement for an alcohol specific sensor, and for an information reporting system that provides consistent information in a uniform manner, then the state will have to test them in their own crime lab, at the expense of the manufacturer. Leaving this task to outside labs, and those that are not ISO-9000 certified is a dangerous practice. It is the public safety we are dealing with, and leaving the certification of devices involved in protecting the public safety to the uncontrolled competitive market is not a good practice. We regulate and license hairdressers, barbers, CPAs, architects, real estate brokers, doctors and lawyers, and they can not always affect the public safety nearly as fast as a poorly manufactured interlock device and a poor interlock service provider system.

3. There must be a statewide standard that determines the eligibility of a service provider to install, calibrate, monitor, and report on the interlock use by offenders. This is the only way that reports on device performance and on driving behavior gets reported to the right people – ones who can use it for enforcement and for purposes of providing good treatment modalities to offenders. There is something magic in a treatment professional being able to say to an offender that he knows that the offender has not been staying away from alcohol while out of his sight, by the use of interlock reports. That magic fades fast when the requirement of making that report is not met because the central control authorities do not have a good protocol, or have not set one in motion at all.

¹⁸ The author has previously published an article on this topic that dealt with particular recommendations and uses of interlocks, in Initiation Interlocks: Are They the Silver Bullet for DUI?, *The Impaired Driving Update*, May/June, 1998, The Civic Research Press, Inc., NY, NY.

What Are the Forms of Interlock Programs in the US?

Interlock programs take 2 forms: Judicial and Administrative.

Judicial Programs are either discretionary or mandatory.

- i. Discretionary. Most early interlock programs (e.g., Maryland, Ohio, California, Texas, Indiana and Virginia) were based on the discretion of a local judge who would order the use of an interlock device in cases where he felt it was necessary, such as for high BAC on arrest, multiple offenders, persons who assessed with an alcohol problem, or person that he just felt would not be abstinent from the use of alcohol, as ordered during probation. These programs were located in small pockets, which is often still the case, even with statewide interlock enabling statutes (e.g., Tennessee and Maryland). Thus, there is no consistency – no common protocol or methodology for selection – in when a person will be ordered into an interlock program, and when he will avoid it. These programs, whether local or statewide, have been the bedrock of interlock programs. Without them, interlock programs would not have taken root anywhere, and there would be no studies on their effectiveness. It was these “rogue” judges who took a chance (often born from the frustration of not knowing what to do with multiple offenders, as fines, jail, license suspensions, and treatment [probation] were not working as an effective tool to retard recidivism).¹⁹ In some states (e.g., Maryland) such discretionary programs live side-by-side with administrative programs. However, where mandatory judicial interlock statutes have taken root, they are inconsistent with discretionary use of interlocks.
- ii. Mandatory. Many of the early statewide programs that had discretionary statutes have now proceeded to mandatory interlock programs after conviction.
 - Virginia has recently adopted a provision that mandates the use of an interlock as part of any court order for a second or subsequent offense if a conditional driver's license is granted.
 - Washington State (mandatory for 1st, 2nd, and 3rd offenders).
 - Texas (mandatory as a condition of bail for a 2nd or subsequent offender upon arrest), and
 - Michigan (mandatory for re-licensure for multiple offenders).

It is clear from the independent studies done in the US and Canada that interlock programs are directly responsible for a reduction in recidivism of up to 65% in a

¹⁹ One of the early pioneers of judicial discretionary programs was Judge Larry Lamson from Calvert County District Court in Maryland.

randomized trial of statistically significant size.²⁰ It is also clear that mandatory interlock programs are bringing more offenders into these programs, and that recidivism rates are lower for those groups.

Administrative Programs are both discretionary and mandatory. Some also have a volunteer component to them.

- a. Discretionary Programs: Many states now have administrative license suspensions (ALS, or ALR [revocation]). There is a move in these states away from allowing the judges to have any control over a person's license and having them concentrate only on the issue of guilt or innocence, and disposition regarding fines, jail, and/or treatment (probation). A list of the ALS states is found in appendix 2. In the remainder of the states, courts exercise jurisdiction over the driver's license, as well as the fines, jail, and/or treatment (as a component of probation). This phenomenon is largely parochial, too. Many legislatures are greatly affected by the fact that some states elect their judges to the bench where traffic cases are tried, causing courts to retain control over the driver's license as part of the criminal case. In others where this political awareness is not tainted by elections, judges tend not to have local control over a driver's license; rather, these tend to be the ALS states.
 - i. Early re-instatement programs are the original form of the discretionary administrative program.²¹ The earliest example of this is West Virginia, which was the first state legislature to encourage entry into an interlock program in exchange for the reduction in sentencing. For example, in West Virginia, a 1st offender is suspended by law for 6 months, but may

²⁰ This study reported a reduction of 65% in the recidivism rates for the 12 months following the installation of an interlock, compared to a "control" group of similar backgrounds. The average number of convictions was 3.5. However, the report does not indicate which persons were in a treatment program, when that occurred in relation to their license reinstatement, and what the result of the treatment program might have been. The study done by Voas, *et. al.*, in Alberta, Canada, although not randomized in nature, had a significant number of participants (n=4000); this study found that, when combined with treatment modes, there was a reduction in recidivism of nearly 55% that lasted for several years beyond the removal of the interlock device.

²¹ "Early re-instatement" is not a term that most administrators like, although that is the effect of these statutes. I believe they are unreasonably sensitive to the claim that they are "getting soft on DUI cases" by allowing an offender to drive sooner than their suspension period. They prefer to call them "conditional" or "hardship" licensing programs, leaving the "suspension" in place, while allowing driving for "conditional" or "hardship" reasons. In fact, these offenders, in about 80% of the cases, drive while suspended anyway, so allowing early reinstatement with interlock programs makes good common sense. It is better to have them driving in an effective interlock program than drinking and driving outside of one.

volunteer to enter the interlock program and have that suspension reduced to 30 days, and drive only an interlock-equipped car with a 5 month interlock "conditional" license. A 2nd offender is suspended for 5 years, but after 9 months may enter the interlock program and drive for 18 months with a "conditional" interlock license. As the number of convictions rises, the time of a "hard" suspension increases, as does the term of the interlock.²² The authorities are pleased to offer such incentive reinstatement programs, as the person driving with an interlock is far less likely to drink and drive than the person who is merely suspended for a long time.²³ Other states with an incentive based program are Maryland and Virginia.²⁴ Although they are working well, and have greatly reduced recidivism rates, these programs have not caught on.²⁵

- ii. Conditional Licensing: Other administrative programs are found in Michigan (where the Driver's License Appeals Division of the Secretary of State will reinstate licenses with participation in the

²² This protocol, an incentive based interlock program, was developed and implemented by David Bolyard, Mgr., Driver Improvement Programs, and Greg Vasiliou, then with the WV DMV, under the direction of the Commissioner of the DMV; its enabling statute was created by former Del. Nancy Kessel, who, when the long-term history of the interlock industry is written will surely be known as the mother of statewide interlock programs. As simple as the concept now appears, it was innovative, to say the least, when it was conceived by her legislation. An even more inclusive protocol has now been developed by William T. McCollum, Executive Director, Commission on Virginia Alcohol Safety Action Programs, Richmond, Virginia.

²³ A person who is suspended for greater than 90 days is 50% likely to never apply for license reinstatement again, anywhere, anytime, whether they are eligible for reinstatement or not; these people also are uninsured, for the most part, as they have no valid driver's license. Source: National Commission Against Drunk Driving, Washington, DC.

²⁴ The HB 1149 rule, as it is known in Maryland (Code, Transportation Article, 16-404.1), as a general rule, allows early, conditional licensure for the 1st offender after 15 days, the 2nd offender 30 days, the 3rd offender 45 days, and the 4th offender 6 months. Like West Virginia, the terms for interlock use extend longer for the number of offenses. If anything, the interlock term is increasing, with the demonstration that recidivism rates decline as the length of the interlock term increase. Cf., Evaluation of the Alberta Transition Interlock Program: Preliminary Results, Traffic Injury Research Foundation, Ottawa, Canada, Beirness, Marques, Voas, and Tippett, Sept. 1997 ("The Alberta Study.")

²⁵ I noted with interest at the Lifesavers 17 conference in Seattle (March '99) that there was little knowledge of what sister states were doing in interlock programs. A clearly defined model is badly needed so that states can use the parts that will work and fit in with their laws. Any state establishing enabling statutes is encouraged to look at what the other states with similar laws have been using in their interlock programs, and to take a very close look at the program protocol and device operating protocols of those states.

interlock program; in proposed legislation in Pennsylvania and New Jersey; and in Tennessee's proposed 1999 legislation.

- b. Mandatory administrative programs are found in Michigan and Maryland (co-existing with discretionary judicial and administrative early reinstatement programs). The Maryland Motor Vehicle Administration's (MVA) has a Medical Advisory Board (MAB) component, which reviews the driver's records of many multiple offenders, referred to them by the adjudications division of the MVA, based on a review of the hard record. This Board then controls the timing for return of a driver's license, since a license revocation (the result of the accumulation of points for the more serious Driving While Intoxicated cases) does not result in the automatic return of a driver's license at any particular point in time. The offender must show that he has been in an alcohol rehabilitation program and that he has been in recovery before being allowed to have a "conditional" license (with an alcohol restriction) in the interlock program. This program is not out of balance with the cases in which an offender's license has been merely suspended, in which case he can volunteer for the interlock program and have a license reinstatement with an interlock on his car, as opposed to those who have been revoked, who have to go through the MAB for permission to get licensed. The MAB assigns virtually all the offenders whom it agrees to re-license to participate in the interlock program. Another mandatory administrative program is found in Michigan, whose Secretary of State must re-license only with an interlock for certain offenders.

It is of no small interest to watch the "turf wars" in various states where interlock laws are being debated. Where the administrative licensing authorities have traditionally done all the re-licensing after a DUI conviction leading to a suspension or revocation, they are loathe to give up the discretion to decide who - and when - one is to be re-licensed within an interlock program.²⁶ Loss of this authority in the courts or the administrative agency would mean loss of a substantial power, loss of manpower, and reduction in budget, none of which appeals to most administrators.

On the other hand, in states where the courts have traditionally had the upper hand in deciding who drives, and under what conditions, they are loathe to relinquish this decision making power to the administrative authorities, thinking that they are not in the position to view these offenders on a case-by-case basis in order to determine who should drive, and under what conditions. Courts have been so dominant over the years in controlling driving privileges that, once they have been forced to relinquish that right to

²⁶ In New York and California, courts will often pass an Order requiring the use of an interlock device, while the administrative licensing authorities will not return the license -- even a conditional license - until they decide it is appropriate under their protocol to do so. These systems are not in sync, and they are hampering the use of interlock programs, and defeating the judgment of courts.

administrators, who shudder at the possibility of courts ever again exercising that jurisdiction and discretion. At the heart of this controversy are 2 competing concerns: the administrators complain that courts are not consistent in how they sentence, and that favorites are played in the courtroom with the clients of attorneys whom they know.²⁷ On the other hand, courts complain that administrators are looking not at the person, but at a hard copy record, and making no allowances for worthy cases, or for hardship cases.²⁸

While they find it difficult to get together during these wars, the public safety is really what is at stake. No matter who has the decision making power, the goal should be common – to stop offenders from drinking and driving in the most effective, long-term manner. Putting away the turf wars in favor of implementing a statewide or national policy on interlocks will save many lives.²⁹

One thing is certain: whether the decision making power is in the hands of the courts or the administrators, those states which have not seen the need to develop a high standard protocol for interlock devices (alcohol specific and ISO-9000 tested), and a stringent protocol for an approved service provider industry are missing out on the best that interlock programs have to offer. The significant behavioral information that comes from a well-run interlock program is very valuable to those who are charged with the

²⁷ The truth is different from the perception: these attorneys are often far more prepared, as they want to present a good case for their client before judges they know well. It would be embarrassing to be poorly prepared in front of such a judge. Better prepared attorneys nearly always have a better sentencing outcome than those who are not prepared.

²⁸ In this respect, they are generally right, but courts have lost their appeal for most federal and state administrators as the person to control a license privilege. It is inconsistency in sentencing that has created this result. No studies have been done on which is the better system, but when one considers the reduction in recidivism rates that have occurred for the non-hard core, persistent, drinking driver as a result of license suspensions, it is hard to argue that, for the compliant personality, license suspension is effective, and that courts who make decisions that do not result in suspensions are not doing the offender, or the public any good. (In many states, courts have the right to make dispositions of cases that amount to being able to sentence them, but do not have any impact on their driving privilege. The purpose, in their mind, is to give consideration in cases where necessary, to the need to drive, and to allow it, as opposed to dealing with the general impact of consistent sentencing for these offenders that would have a more specific deterrent effect on a larger population. Of course, the 31% of persistent drinking drivers are not going to be affected by either process, nor will a large part of the 1st offenders be affected, which is why interlock programs have become so popular to combine with treatment programs over a long term.

²⁹ Callier and Longest, in *The Technology Solution to the Persistent Drinking Driver* (Washington, DC and Chicago, Ill., 1996 [republished April, 1997]), estimated that there would be 2300 lives saved annually in the US if every multiple offender were placed on an appropriate interlock program.

responsibility for re-licensure, for treatment, for probation, and for reducing recidivism. We will examine this more, below.

Are Interlock Programs Effective in Reducing Recidivism?

With a centralized, controlled program protocol, interlocks are very effective in reducing recidivism. The debate on this topic was put to rest by the Maryland Randomized Study. Although I could address here all the studies that have been done in connection with this issue, as well as the many non-research papers that have been written on it, I will be more brief.³⁰

³⁰ I will list here what I believe to be the significant publications on the issues of the effectiveness of interlocks and the implementation of their program protocols:

I. Effectiveness:

- a. *Effectiveness of Ignition Interlock Devices in Reducing Drunk Driving Recidivism*, Jeffrey H. Caben, MD, Gregory L. Larkin, MD, American Journal of Preventive Medicine, Jan/Feb, 1999.
- b. *Evaluation of the Alberta Ignition Interlock Program: Preliminary Results*, Beirness, Marques, Voas, and Tippetts, Traffic Injury Research Foundation, Ottawa, Canada, and Pacific Institute for Research and Evaluation, Bethesda, Maryland, presented at the 14th International Conference on Alcohol, Drugs, and Traffic Safety, September, 1997
- c. *The Effects of Alcohol Ignition Interlock License Restrictions on Multiple Alcohol Offenders: A Randomized Trial in Maryland*, Beck, Rauch and Baker, Study done by the Insurance Institute for Highway Safety, University of Maryland, and WESTAT, Inc., Rockville, Maryland, published April 23, 1997, Baltimore, MD.
- d. *A Preliminary Report on the Effectiveness of the Illinois Secretary of State's Breath Alcohol Ignition Interlock Device Pilot Program*, presented at the Transportation Research Board's 76th Annual Meeting, January 16, 1997, Larry D. Etzhorn, and Jim Martin (TRB ID Number: CF7025).
- e. *The Hardcore Drinking Driver*, Study done for Anheiser-Busch by the Traffic Injury Research Foundation, Herbert Simpson, 1997.
- f. *Hancock Superior Court II DWI Sentencing Policies*, Hon. Richard D. Culver, Judge, Hancock County, Indiana, reported at the May, 1996 Virginia Judicial Conference, Williamsburg, Virginia.

II. Implementation of interlock programs and protocols:

- a. *The Technology Solution to the Persistent Drinking Driver*, Collier and Longest, Washington, DC, April 1997, presented to the Board of Trustees of the National Commission Against Drunk Driving.
- b. *Ignition Interlocks: Are They the Silver Bullet for DUI?*, *Impaired Driving Update*, May/June, 1998, Civic Research Institute, Inc., NY.
- c. *What We Know vs. What We Think We Know About Drunk Drivers and the Role of Ignition Interlocks in Maryland*, Hon. Daniel W. Maylan, Judge, and Carole F. Hinkel, Administrator, Drinking Driver Monitor Program, May, 1996.

After all the reports had been written, the Allegheny County Trauma and Injury Center in Pittsburgh did a peer review article that reviewed all the interlock studies ever done, along with their methods, and their results. Although there were some that they did not review that had value in describing programs, their overall selection was excellent. The review appeared in the January/February edition of the *American Journal of Preventive Medicine*. It's conclusions, quite naturally, were the same as the major studies: that interlock programs are between 15% and 65% effective in reducing recidivism amongst the hard core, persistent drinking driver. They did not do original research, but conducted a good evaluation of the studies that had been done by others. In the end they reported that "... the weight of evidence obtained in our review suggests that ignition interlock technology holds great promise as an effective adjuvant mechanism for reducing DWI offenses among this high risk group [multiple offenders]."³¹ (Emphasis Added)

Large dependence in that article was placed on the Randomized Trial done by Beck, Baker and Rauch in the US in their controlled study of multiple offenders in the Maryland interlock program. One word of caution in reading this study: although many who have read it reported that it appeared that the treatment coming through the Medical Advisory Board was concurrent with the interlock program, that was, in practice, seldom the case. Generally, the treatment long preceded the interlock program, although it is likely that all the subjects had, indeed, gone through a treatment program of some sort, but not all the same one, the same length, nor the same quality. And remember when reading this study that all these persons had gone through an extended period of suspension or revocation, which, again, was often preceded by the treatment program.

The point is this: not much can be said for the role of treatment in this group, one way or the other, for it was so far in advance of the suspension period and the interlock program that it is very likely that these person were driving for a long time without a license anyway. This perhaps explains why the results were remarkable – a 65% reduction in recidivism rates for this group that averaged 3.5 offenses. The non-interlock group was so long out of treatment and had no doubt been driving unlicensed that they were more likely to get caught doing so.³²

Yet the Maryland Randomized Study is very valuable. It has clearly established, by a strong statistical margin, that interlocks are the single most effective tool that we have

³¹ *The American Journal of Preventive Medicine*, Jan/Feb 1999, *ibid*.

³² Evidence of this weakness - and of the need for treatment concurrent with the interlock program - is the fact that, after a year on the interlock device, when the interlock group was removed from the program, their recidivism rate was about the same as the non-interlock group. This is not a signal that the interlock was not effective, but rather that it was very effective while it was used, but without treatment, it would not cure alcoholism. The Alberta study, although not randomized, presents strong evidence that the combination of the interlock with treatment has a long term impact on reducing recidivism among problem drinkers, whether multiple offenders, or first offenders.

ever used for the multiple offender to reduce recidivism in a group that averaged 3.5 convictions each.

Thus, the question is no longer whether interlocks are an effective deterrent for the drinking driver, but, rather, what is the most effective interlock program?

What Should a Good Interlock Model Statute Look Like?

Considering all the differing models at work in the US, without an individual of study of each, it is not possible to say which one has a better format than the other. Clearly, though, some have weaknesses that are evidenced by continued high recidivism among problem drinkers, and very small interlock program participation on a statewide basis, despite what we know about their effectiveness.

Here is what a good interlock model should include:

1. An enabling statute that is statewide, and strong in effect; a federal program that was imposed on the states would be even stronger. For the sake of consistency, and having the program have the highest impact, the statute should mandate the use of interlock devices in defined circumstances, such as for certain first offenders with high BAC on arrest, and all multiple offenders, either as a condition of probation or license reinstatement, as described below.
2. A defined methodology for deciding who should be ordered into an interlock program (the so-called "voluntary" programs simply do not work well, as the multiple offender who needs the interlock program is loathe to volunteer for it; he likes his life the way it is, with alcohol involved, and driving when he wants, and does not want that changed). This methodology should include:
 - a. an assessment of every person convicted of a DUI, or given some reduced plea disposition in a DUI case (this would include those first offenders who are given an alternative disposition that does not result in a conviction or a license suspension).
 - b. a monitoring program involving a qualified probation professional to track the offender to make sure that he is compliant with all his treatments, fines, community service, and interlock program protocols, and who will report violations to a court for follow-on sanctions while the offender is on probation
 - c. creating some easy-to-identify criteria for who is a problem drinker, such as a breath alcohol test of $>0.15\%$ on arrest for a first offender,³³ an accident with

³³ The "first offender" who can drink enough to get to 0.15% BAC and still drive a vehicle probably has a problem with alcohol, as if this were his first true drinking and driving experience, he probably would have found it impossible to even get behind the wheel in the first instance. Seldom are first offenders really caught the first time they were impaired and driving. Estimates by studies and experts indicate that he has been impaired between 200 and 1,000 times before his is caught for his first offense. (Source: National

personal injury or death caused by the offender; all multiple offenders with a prior conviction within the past 5 years should be considered as a problem drinker.

After the assessment, if it is determined that the offender truly is not a problem drinker, the interlock and treatment components of the sentence can be changed by the court.

3. A stringent device operating protocol, requiring an alcohol-specific interlock device, certified by an ISO-9000 laboratory, whose sensor will remain stable in the field for at least 90 days. The device should be certified by the central monitoring authority, described below.
4. A stringent service provider operating protocol,³⁴ setting forth:
 - a. the requirements for service frequency, e.g. 30, 60, or 90 days, with earlier service in the event of positive BAC results
 - b. the requirements for technician qualifications
 - c. the prior required experience of the service provider
 - d. demand for an information management system that will work well with the interlock device and provide information reports on a regular basis
 - e. demand that service be rendered by the service provider on a statewide basis, allowing for mobile service in more remote areas, but requiring fixed base operations in highly populated areas (e.g., $n > 250,000$)
 - f. 24 hour, 365 day on-call service
5. A unified, computerized, dedicated information management and reporting system which will provide
 - a. uniform reports from dataloggers (in the interlock device) to authorities,
 - b. with a user-friendly environment, and
 - c. electronic reporting of events logs, violations, compliance, tampering, circumvention efforts,

Commission Against Drunk Driving, Washington, DC; Terrance Schiavone, President) Thus, such persons are highly suspect as a problem drinker.

³⁴ Some states in the US have a definitive rule: they want a competitive bidding process for an interlock service provider, and do not want to have to deal with differing installation procedures, information reports, or the problems associated with tracking person who are ordered to use interlock devices (e.g., West Virginia, North Carolina, Oregon and Virginia). Others have not developed this level of sophistication, or have a fear of making a choice that will appear to stifle competition. (e.g., Maryland, Texas) Actually, it is possible (but much more difficult to manage) to have a competitive service provider system, if, and only if, the service provider protocol is well defined and enforced. A sole source interlock program provides the state central monitoring agency the ability to solve problems very quickly, to take enforcement action that is effective quickly, and to make the highest and best use of the information reports in treatment and in the courts.

- d. statistical reporting of archived data on driver behavior (for study purposes), and
 - e. be uniform as to all interlock programs in the state.
6. A clearly defined policy for further sanctions involving those who persist in violating the terms of the interlock program, which tightens the sanctions, but leaves the interlock in place as a continuing monitoring program after the increased sanctions are imposed.³⁵ Judges should not be afraid to "split" a sentence, offering probation and the interlock program with treatment for good behavior, and requiring even jail for part of the sentence (even if it occurs as a result of a violation of probation), followed by additional probation and interlock and treatment after the jail term.
 7. If the program is to be an administrative program, run by the agency that governs driver's licensing, then it should have definitive policies requiring interlocks as a condition of re-licensure for that group of offenders defined above.
 8. The mandatory term of interlocks should be set to coincide with, at a minimum, the term of probation, treatment, and an additional follow-on period to allow the courts to determine if the offender is likely to recidivate. Short programs (less than 6 months) have little effect on offenders, as they learn very little about their problem – and change even less about it – in such a short time. 12 months should be a minimum program, with additional terms (e.g., 6-month intervals) for each additional offense.
 9. Last, and just as important as the others, there must be an agency that is the central monitor for the interlock program, which has an identified interlock coordinator (an individual), sets all the protocols, determines who is eligible as a service provider, certifies interlock devices, and enforces the rules and regulations for the program. It must also be the interface between the service provider, the courts (or the administrative agency), providing a smooth delivery of services and reports from dataloggers back to the courts, probation, and treatment personnel.

³⁵ Very often, interlock participants will complain about the interlock device, claiming false positives, or that someone else was messing with the device, and denying that they were using alcohol. Their goal is to get the interlock removed. They would rather face the more traditional sanctions, for they have a defined duration, and are something they have become accustomed to tolerating. These traditional sanctions are easily maintained, and even used in increasing order of intensity, while the offender remains in the interlock program as a monitoring tool. Removing offenders who continue to show positive BAC results [indicating continued drinking] is merely throwing them into the "briar patch," and will not provide the court, probation, or treatment with any assurance that they will not drink and drive again. After all, it was that behavior that got the offender there in the first place. Clearly, it will not provide any level of safety for the public if they are removed from the interlock requirement merely because they have tried to drink and drive.

Conclusions:

The long-standing question as to whether or not interlocks are an effective deterrent for the drinking driver is now at rest. They have been statistically proven to be highly (up to 65%) effective in reducing recidivism while installed on a car, even amongst multiple offenders. They are even more effective in dealing with the first offender.³⁶ Interlock programs have a far more extensive impact on recidivism than do the traditional sanctions, and they cost the government no money, as they are affordable, offender-paid programs. Interlock devices are now commercially sound and reliable. Proper testing will eliminate non-compliant products, and there are well established program protocols established that will fit with nearly every state's laws on DUI offenses. Interlock programs should not be used in lieu of traditional sanctions, but in addition to those sanctions in cases where the courts/administrators fear that an offender will not stop drinking and driving regardless of the disposition of his case.

³⁶ WV DMV reported nearly a 95% success rate in their program in 1997, including first offenders in their numbers.

Appendix I

States With Ignition Interlock Programs (March, 1999)

1. ALASKA (enabling statute, but no program yet); judicial
2. ARIZONA (enabling statute for a small, 300 unit, pilot program); judicial
3. ARKANSAS (enabling statute, but no statewide protocol); judicial
4. CALIFORNIA (enabling statute for many years, but conflicts with the DMV regs cause reduced judicial involvement); judicial, subject to administrative approval of licensing
5. COLORADO (enabling statute, but state regs discourage providers from having statewide programs due to cost of delivery in the fashion that Colorado requires)
6. DELAWARE (small program); judicial
7. FLORIDA (enabling statute, but no statewide use of interlocks due to lack of regs and little use by DSHMV and the courts); judicial
8. GEORGIA (a strong interlock statute, but not enforced; small program); judicial
9. HAWAII (enabling statute, but no statewide program yet); judicial
10. IDAHO (enabling statute, but no statewide program yet); judicial
11. ILLINOIS (enabling statute, and amendments pending; pilot program was very successful, as seen in recent study report from Secy. of State [>50% reduction in recidivism]); regulations being developed; judicial
12. INDIANA (enabling statute, but small statewide program; good program in Hancock County through Courts); judicial
13. IOWA (enabling statute: long running program, but not increasing in size); judicial
14. KANSAS (enabling statute: fragmented programs in parts of state); judicial
15. LOUISIANA (enabling statute, but used mainly in the New Orleans & Baton Rouge areas, and seldom outside of that Parish); judicial
16. MAINE (enabling statute, but no program yet); judicial
17. MARYLAND (strong enabling statute, older program, both MVA and judicial: mandatory interlocks through the Medical Advisory Board, voluntary program for those seeking early licensure, and mandatory if the court requires interlock as a condition of probation; location of the random study by the Insurance Institute for Highway Safety and the Univ. of Maryland (Baker, Beck & Rauch [65% reduction in recidivism for multiple offenders while on interlock])); both judicial and administrative
18. MICHIGAN (enabling statute, undergoing restructuring this year; very small program); protocol for program/regulations now pending publication; devices certified; administrative as a condition of license reinstatement; judicial discretion for probation
19. MINNESOTA¹
20. MISSOURI (enabling statute, decent programs in 3 major cities); no centralized protocol or reporting system - all individual; judicial
21. MONTANA (enabling statute, but small program from courts); judicial
22. NEBRASKA (enabling statute, small program, not statewide); judicial

¹ Has a request for manufacturers to fund a pilot program, which has never happened, and is unlikely: thus, no program exists, and no new legislation has passed.

23. NEVADA (mandatory interlocks for multiple offenders as a condition of licensure);
judicial
24. NEW YORK (enabling statute, older state program, but very small due to long term
pilot program, and conflicts between DMV and courts [courts requiring interlocks can't
provide a provisional license, so there are very few interlocks in the State; Long Island
has the largest program]); judicial, but subject to administrative approval of licensing
25. NEW JERSEY (enabling statute passed in 1999; awaiting protocols to be developed; no
program started); judicial
26. NORTH CAROLINA (enabling statute, through DMV, as a condition of licensure for
those with alcohol problems); administrative and judicial
27. NORTH DAKOTA (enabling statute, very small program); judicial²
28. OHIO (enabling statute; older program; large in Cincinnati, but small in rest of State);
judicial
29. OKLAHOMA (enabling statute, good program in Tulsa, but not statewide); judicial
30. OREGON (an older, statewide program, rendered by one vendor under contract; good
statewide use of interlocks); judicial
31. RHODE ISLAND (enabling statute, but no program); judicial
32. TENNESSEE (enabling statute, but the program exists only in several cities;
legislation under consideration to expand the program; no protocol yet adopted);
judicial
33. TEXAS (strong statute - mandatory for second and subsequent offenders as a
condition of bond; frequent judicial use as a result of conviction and probation);
judicial
34. UTAH (enabling statute, but small program); judicial
35. VIRGINIA (strong interlock statute as of 1998 - mandatory for conditional license for
second or subsequent conviction; judicial discretion for all other uses; Va. expects to
be a very strong user of interlocks for the years to come; program administered under
VASAP, with a single vendor); excellent service provider program protocol and device
operating protocol; judicial
36. WASHINGTON STATE (just passed a mandatory interlock for 1st, 2nd, and 3rd
offenders as a condition of sentencing); protocols are pending; judicial and
administrative as part of licensure
37. WEST VIRGINIA (long term program, voluntary early license reinstatement after
revocation through the DMV; legislation contemplated to provide for expanded use
there for post-incarceration offenders [subject of Voas study showing >50% reduction
in recidivism]); centralized reporting, good program protocol; administrative
38. WISCONSIN (enabling statute, but struggling for some time in getting a program in
effect; state supports interlocks, but small judicial use of them); judicial

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² South Dakota has a few interlocks as a condition of probation, but no interlock statute.

Appendix II

STATES WITH ILLEGAL PER SE LAWS
(Alcohol Concentration ≥ 0.10 unless otherwise indicated)

Alabama (≥ 0.08 1995)	Kansas (≥ 0.08 1995)	North Dakota
Alaska	Kentucky	Ohio
Arizona	Louisiana	Oklahoma
Arkansas	Maine (≥ 0.08 1988)	Oregon (≥ 0.08 1983)
California (≥ 0.08 1989)	Maryland	Pennsylvania
Colorado	Michigan	Rhode Island
Connecticut	Minnesota	South Dakota
Delaware	Mississippi	Tennessee
District of Columbia	Missouri	Texas
Florida (≥ 0.08 1993)	Montana	Utah (≥ 0.08 1985)
Georgia	Nebraska	Vermont (≥ 0.08 1991)
Hawaii (≥ 0.08 1995)	Nevada	Virginia (≥ 0.08 1994)
Idaho (≥ 0.08 1997)	New Hampshire (≥ 0.08 1993)	Washington
Illinois (≥ 0.08 1997)	New Jersey	West Virginia
Indiana	New Mexico (≥ 0.08 1993)	Wisconsin ¹
Iowa	New York	Wyoming
	North Carolina (≥ 0.08 1993)	

TOTAL=49 ¹Alcohol Concentration ≥ 0.08 for a 3rd or subsequent offense

ADMINISTRATIVE PER SE LAWS

Alabama	Indiana	New Mexico
Alaska	Iowa	North Carolina
Arizona	Kansas	North Dakota
Arkansas	Louisiana	Oklahoma
California	Maine	Ohio
Colorado	Maryland	Oregon
Connecticut	Massachusetts	Texas
Delaware	Minnesota	Utah
District of Columbia	Mississippi	Vermont
Florida	Missouri	Virginia
Georgia	Nebraska	Washington ¹
Hawaii	Nevada	West Virginia
Idaho (Effective 1/1/98)	New Hampshire	Wisconsin
Illinois		Wyoming

TOTAL = 41 (40 States plus the D C) ¹Action only for 2nd or subsequent violations

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