

Ignition Interlock Device Guidelines for DWI Courts



INTRODUCTION

DWI Courts target hardcore drunk drivers. Hardcore drunk drivers are defined as individuals with a history of prior impaired driving convictions and/or with a BAC (Blood Alcohol Concentration) over .15%. These individuals are often more resistant to traditional interventions for impaired drivers and often suffer from alcohol dependence.

Hardcore drunk drivers pose a greater risk to society and require the higher levels of supervision that exist in DWI Courts. An Ignition interlock is one more tool or technology DWI Courts can use to increase the monitoring of DWI Court participants and improve public safety.

In June, 2010, the Board of Directors of the National Association of Drug Court Professionals adopted the following position statement regarding ignition interlock devices:

The National Association of Drug Court Professionals supports the use of ignition interlock devices for DWI Court and Drug Court participants.

Research demonstrates that ignition interlock devices are an effective tool in stopping an individual from starting a vehicle after consuming alcohol while the device is installed on that vehicle. The device prevents a vehicle from starting if a person's blood alcohol level exceeds a pre-set limit.

Research also demonstrates that once the ignition interlock device is removed from the vehicle, recidivism rates eventually return to pre-installation levels. To achieve a long term change in behavior and reduce long term risk, individuals should also be involved in a comprehensive alcohol/drug treatment program.

Community public safety supports the installation of ignition interlock devices to stop an addicted person from driving after drinking while the benefits of treatment are accruing.

The following guidelines are designed to assist DWI Court teams as they consider incorporating the use of ignition interlock devices into their court.

GUIDELINE NUMBER 1: PARTICIPANTS MUST FOLLOW THE LAW. WHEN LEGALLY ALLOWED, PARTICIPANTS SHOULD DRIVE IN AN IGNITION INTERLOCK EQUIPPED VEHICLE.

Most DWI Court participants are repeat drunk drivers and thus, typically will not possess valid driver's licenses.

While every state has its own statutory requirements, federal law (23 USC §164a(4)A) provides that subject to state law and restrictions a repeat DWI offender can receive a restricted license to drive, but only if there is an ignition interlock device placed upon the offender's vehicle. Failure to comply with this provision results in a diversion of federal highway safety funds for the state.

Some states have passed legislation using the cited federal language that allows the granting of limited licenses, but only if the offender is in DWI Court and an ignition interlock is installed on his vehicle.

State associations of Drug Court professionals and DWI Court team members should consider and pursue similar legislation in their respective states.

GUIDELINE NUMBER TWO: DWI COURT TEAM MEMBERS NEED TO UNDERSTAND STATE DRIVERS LICENSE ADMINISTRATIVE LAW AND PROCEDURE.

Procedures for securing restricted licenses vary greatly state by state. DWI Court teams must familiarize themselves with their state's driver's license administrative law and procedure and fashion their DWI Court's policies so as to comply with the law and procedure.

It is important to develop a cooperative relationship with the motor vehicle licensing authority in your state with the goal of developing good policy in the application and expansion of DWI Court/Ignition Interlock programs.

GUIDELINE NUMBER THREE: DWI COURT TEAM MEMBERS NEED TO UNDERSTAND THE DEVICES AVAILABLE IN THEIR STATE.

Some states have their own technical standards as to what is required of ignition interlock providers. These standards vary greatly between the states. A state's technical requirements

may also rely upon The NHTSA (National Highway Traffic Safety Administration) 1992 Ignition Interlock Model Specifications.¹

Many states provide lists of companies that are authorized to offer ignition interlock services in the particular state.

It is important for DWI Court team members to understand the capacities of the various devices approved for use in the state so they can be used effectively in a DWI Court Ignition Interlock Program.

DWI Courts must work only with ignition interlock providers and devices that are approved for use in the court's state.

GUIDELINE NUMBER FOUR: IGNITION INTERLOCK DEVICES CAN BE USED TO HELP MONITOR A PARTICIPANT'S ALCOHOL USE.

Ignition interlocks were designed to keep a motor vehicle from starting if the driver tests positive for alcohol in excess of a predetermined breath alcohol level.

Ignition interlock devices were **NOT** created to monitor alcohol consumption. However, a number of DWI Courts are currently using ignition interlock devices to control both the participant's vehicle and monitor alcohol consumption.

This is only appropriate when:

- 1) The DWI Court has a zero tolerance policy as to alcohol consumption, and
- 2) The ignition interlock is not used to prove the presence of a particular breath alcohol level in a participant.

Ignition interlock devices can be programmed to require a DWI Court participant to make a certain number of alcohol monitoring blows per day, at specified times. A missed test, or a blow that is above a preset alcohol level, is recorded in the device as a violation.

¹ NHTSA Model Specifications for Breath Alcohol Ignition Interlock Devices: Federal Register Vol. 7, No 67, Page 11772 et. sec.

The use of the ignition interlock in this manner can be a great benefit to a participant as the testing device is conveniently located at his or her residence and it is always transported with the participant whenever he or she drives to a different location. Using the same device to control the vehicle and for alcohol monitoring may also result in a cost savings to the participant and the program.

A positive alcohol blow may be indicative of the presence of mouth alcohol and many companies require additional blows when a positive result occurs, to allow the possibility of mouth alcohol to be cleared from the participant's system. Information stored in the data logger from the additional tests can also provide important information as to the underlying alcohol incident.

GUIDELINE NUMBER FIVE: USE PHOTO IDENTIFICATION IGNITION INTERLOCK DEVICES TO PROVIDE PROOF POSITIVE OF WHO PROVIDED THE BREATH SAMPLE.

There are a variety of anti-circumvention features associated with ignition interlock devices designed to limit opportunities that a person other than the program participant/driver is providing the sample for the device to measure.

In the DWI Court setting it is critical to identify the individual that is blowing into the device. Many DWI Courts are utilizing ignition interlock devices which also provide a photo of the person providing the sample. A number of interlock companies have such devices available and it is important that DWI Courts understand how this feature works.

Some DWI Court judges report that photo identification technology has greatly increased their acceptance of using ignition interlocks.

GUIDELINE NUMBER SIX: DWI COURT TEAMS NEED TO UNDERSTAND THE USE OF DATA LOGGERS/EARLY RECALL.

Modern ignition interlocks have data loggers which capture and store information about a wide range of vehicle events in the handset. Devices also have a backup of the data in a second location in the event that the handset is lost.

Ignition interlock data loggers are downloaded at the ignition interlock company facility between every 30 to 67 days. Information obtained by these regular data logger downloads is

not sufficient to provide the DWI Court with timely information needed to effectively address a participant's violation.

Many modern ignition interlocks have an "Early Recall" mechanism. If a DWI Court participant fails to comply with the requirements programmed into the device (e.g. blowing positive for alcohol or missing a required blow), the Early Recall mechanism is activated and a message appears on the interlock's screen telling the participant that if he/she does not bring the vehicle in for a data download within 48 hours the vehicle will no longer start.

Ideally, upon the downloading of a participant's violation at the ignition interlock company's facility, an e-mail is sent to the probation department and a violation can be processed in the normal manner of the DWI Court.

A court needs to check with the state's administrative ignition interlock program authority as to the availability of this approach.

The data obtained from the device needs to be made available to the entire team, especially treatment providers, to assist in providing an effective treatment response.

GUIDELINE NUMBER SEVEN: INCENTIVES AND SANCTIONS ARE IMPORTANT IN A DWI COURT IGNITION INTERLOCK PROGRAM.

While the use of ignition interlocks in DWI Courts is a relatively new practice, it is important to remember that DWI Courts are a type of Drug Court. DWI Courts do not have to reinvent the wheel.

In DWI/Drug Courts, incentives for good behavior are more effective in changing participant addictive behavior than are sanctions. This same philosophy should be applied to the administration of DWI Court using Ignition Interlocks.

Sanctions in DWI/Drug Courts are progressive, becoming more significant based upon the number of violations and the nature of those violations. Revoking probation and/or removal of the ignition interlock devices should not be done lightly. It is important to recall that public safety is enhanced while the devices are on the vehicles. DWI/Drug Courts may want to consider extending the length of time a device is on the vehicle for a violation as an appropriate response.

Revocation of probation and/or removing of the ignition interlock devices must be weighed against an increased likelihood that drinking and driving may result.

GUIDELINE NUMBER EIGHT: INDIGENCE AND PROGRAM COSTS SHOULD BE REVIEWED WHEN USING IGNITION INTERLOCKS.

While DWI Court participants frequently have more resources and support systems available than do participants in classic Drug Courts, it is clear that a significant number of DWI Court participants have limited financial resources. Participant resources may be strained by the aggregate of fines, court costs, treatment expense, ignition interlock costs, license reinstatement fees and increased insurance expense.

Using ignition interlocks to both monitor the participant's alcohol consumption and to control the participant's vehicle may result in cost saving for the participant and the program. Furthermore, the ability of the participant in the DWI Court Ignition Interlock Program to earn a living may be substantially increased by making it possible for the participant to legally drive to and from employment.

However, a DWI Court Ignition Interlock Program must have some method in place to provide ignition interlock services at little or no cost to the truly indigent participant. The development of a form using objective criteria to qualify an individual as an indigent participant is recommended, although being able to afford an ignition interlock is not the same as being able to qualify for representation by a public defender.

GUIDELINE NUMBER NINE: REPEAT DWI OFFENDERS ARE A DANGEROUS TARGET POPULATION KEEPING THE COMMUNITY INFORMED OF THIS PROGRAM IS CRUCIAL.

Repeat DWI offenders carry with them a level of risk that many Drug Court participants do not. They repeatedly put themselves and others at significant risk by driving a vehicle while impaired on public roads.

Most law enforcement professionals understand that a very high percentage of repeat DWI offenders continue to drive when their licenses are suspended or revoked. However, the public at large, typically, is not aware of this behavior.

If a DWI Court participant should be involved in an alcohol-related crash in which someone is injured or killed, it is likely that the public will hold the DWI Court Ignition Interlock Program accountable for enabling the participant to be back on the road.

It is important to involve the community at the beginning of the process to increase the understanding on why ignition interlocks are being used in the DWI Court and the benefits they bring to the court and the community.

Some DWI Court Ignition Interlock Programs require more than the simple expiration of the 45 day hard suspension before they authorize the issuance of the restricted license. These additional conditions may include, but are not limited to, a longer period of good behavior/clean time and successful completion of certain levels of alcohol/drug counseling. Relapses or certain probation violations may restart the clock before a limited license is issued.

The establishment of these conditions must take into account local considerations, but a fair amount of caution is recommended before the restricted license is granted. Such concerns must be weighed against the understanding that the sooner that the ignition interlock devices are placed on the participant's vehicles, the sooner the protective benefits of the ignition interlocks can be realized.

GUIDELINE NUMBER TEN: DWI COURTS MUST PROVIDE CLEAR WRITTEN POLICY/PROCEDURES FOR THE IGNITION INTERLOCK PROGRAM.

As with all human activity, communication is crucial. Each DWI Court utilizing ignition interlocks must include in its Memorandum of Understanding all critical terms detailing the use of the ignition interlocks and related procedures, including but not limited to those issues that have been specifically highlighted in these guidelines.

Some states provide for a number of separate criminal charges that may be committed when using an ignition interlock, such as:

- tampering with or attempting to circumvent the device
- asking a bystander to provide a sample
- a bystander actually providing a sample

A DWI Court team should discuss all criminal charges that could be brought as a result of any possible violation, or if any violation would result in additional sanctions in the DWI Court. The team's understanding should be reflected in the Memorandum of Understanding.

All DWI Court Ignition Interlock Program participants must be given a handbook that sets forth clear and detailed policies and procedures as to what are their rights and responsibilities in the program, so as to insure that they enter the program with appropriate expectations.

There should be a clear discussion in the participant's handbook to ensure the participant is informed as to any potential criminal charges that may be brought based on his or her use of an ignition interlock device.

The National Center for DWI Courts (NCDC), a professional services division of the National Association of Drug Court Professionals (NADCP), is the only dedicated advocacy, policy, training and technical support organization for DWI Courts in the nation. For more information about the NCDC or DWI Courts go to www.dwicourts.org.

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