Bill as Introduced

HB 713-FN – AS AMENDED BY THE HOUSE

5jan00....2184h
10feb00....3248h

1999 SESSION

99-0333
03/02

HOUSE BILL ***713-FN***

AN ACT relative to penalties for multiple DWI offenses.

SPONSORS: Rep. Almy, Graf 14; Rep. Sabella, Rock 13; Rep. Bradley, Carr 8; Rep. Richardson, Ches 12; Rep. Mirski, Graf 12

COMMITTEE: Criminal Justice and Public Safety

AMENDED ANALYSIS

This bill revises the penalties for repeat DWI offenders to include ignition interlock systems for offenses involving alcohol.

Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

HB 713-FN – AS AMENDED BY THE HOUSE

5jan00....2184h
10feb00....3248h

99-0333
03/02

STATE OF NEW HAMPSHIRE

In the Year of Our Lord One Thousand Nine Hundred and Ninety-Nine

AN ACT relative to penalties for multiple DWI offenses.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 New Sections; Definition of Ignition Interlock Device and Provider. Amend RSA 259 by inserting after section 43 the following new sections:

259:43-a Ignition Interlock Device. "Ignition interlock device" shall mean breath alcohol ignition interlock device, which is a system or device that connects a breath analyzer to a motor vehicle's ignition system. The analyzer measures the concentration of alcohol in the breath of any person who attempts to start the motor vehicle by using the ignition system. The device prevents the vehicle from starting unless the person provides a breath sample with a concentration of alcohol that is below a preset level. The device contains a data-logger which retains records of failures to take or pass the test during the period between recalibrations.

259:43-b Interlock Service Provider. An approved interlock service provider means an entity that installs, services, calibrates, monitors, and provides reports as required by RSA 265:82-e, II(c) who is approved by the commissioner of the department of safety to do so; no person shall provide any of the services of an approved interlock service provider without such prior approval.

2 New Subdivision; Alcohol Ignition Interlock Program. Amend RSA 265 by inserting after section 82-d the following new subdivision:

Alcohol Ignition Interlock Program

265:82-e Alcohol Ignition Interlock Program Established. Any person whose license or permission to drive has been revoked or suspended under RSA 265:82-b may be required by the court after the period of revocation or suspension to install an ignition interlock device as defined in RSA 259:43-a in any vehicle registered to that person or used by that person on a regular basis, for not less than 6 months nor more than one year for a first offense or more than 3 years for a subsequent offense. Installation and monitoring costs shall be paid by the offender. A certificate proving installation of the device shall be provided to the division of motor vehicles as a condition precedent to reinstatement of the individual's license to drive, and the division may mark the person's license accordingly.

I. An ignition interlock device may not be sold or distributed in this state without the device being approved by the commissioner of the department of safety in consultation with the advisory committee on breath analyzer machines established in RSA 106-G, as provided in RSA 265:82-e.

II. The department of safety shall establish rules, pursuant to RSA 541-A, for the approval

of ignition interlock devices, and for the licensing of approved interlock service providers.

III. The commissioner shall adopt rules and regulations to create an ignition interlock program protocol that will control the delivery of interlock service in this state under this subdivision. The rules adopted for the licensing of approved interlock service providers shall require that each provider, at a minimum;

(a) Provide recalibration of each device monthly, unless otherwise ordered by the court;

(b) Maintain at least that number of locations across the state for the installation, service, calibration and monitoring of an ignition interlock device as might be required from time to time by the program operating protocol developed by the commissioner;

(c) Provide periodic reports as determined by the court or in department rules, to the arresting agency, the court of jurisdiction, and, if applicable, to the offender's treatment provider and probation office;

(d) Retain all data-logger records for 12 months after the end of the period to which the offender is sentenced;

(e) Provide installation and service to those offenders determined by the court to be unable to pay the full cost of an interlock program, by developing a hardship credit equal to 2 percent of the gross receipts of each approved interlock service provider excluding the purchase or rental cost of the interlock device; and

(f) Provide a certificate of installation to the vehicle's owner upon installation of the device in a form to be determined by the department's interlock service protocol.

265:82-f Alcohol Ignition Interlock Circumvention.

I. Any person required by the court to drive only a motor vehicle equipped with an ignition interlock device shall not drive any motor vehicle not equipped with this device.

II. A person may not tamper with, or in any way attempt to circumvent the operation of an ignition interlock device that has been installed in a motor vehicle.

III. A person may not start or attempt to start a motor vehicle equipped with an ignition interlock device for the purpose of providing an operable motor vehicle to persons who is restricted by law to drive only a motor vehicle so equipped. The provisions of this section do not apply if the starting of a motor vehicle, or the request to start a motor vehicle equipped with an ignition interlock device, is done for the purpose of safety or mechanical repair of the device or the vehicle, and the person subject to the court order does not drive the vehicle.

IV. A person may not knowingly provide a motor vehicle not equipped with a functioning ignition interlock device to another person whom the provider of the vehicle knows was sentenced to drive only a motor vehicle equipped with an ignition interlock device.

V. Any person who violates the provisions of this section shall be guilty of a misdemeanor.

265:82-g Violating Court Order.

I. The court shall immediately suspend the privileges to operate a motor vehicle of, and issue

THOLL

a bench warrant for, any persons who fails to comply with any order of the court regarding the installation of an ignition interlock device after the period of revocation or suspension imposed in RSA 265:82-b. The privileges to operate shall not be restored until the court is satisfied that the person is in compliance with its order.

II. If it is found that a person required to drive a motor vehicle equipped with an ignition interlock device has failed to comply with any requirement for the maintenance or calibration of the device, or shows a consistent pattern of failures to pass the breath test provided by the device, the court may issue a hearing to determine if the person should be held in contempt of court and may order a further license suspension or revocation. The period of suspension or revocation under this section shall be added to any previously ordered suspension or revocation.

3 Reckless Driving; Minimum Penalty. Amend RSA 265:79 to read as follows:

265:79 Reckless Driving; Minimum Penalty. Whoever upon any way drives a vehicle recklessly, or so that the lives or safety of the public shall be endangered, or upon a bet, wager or race, or who drives a vehicle for the purpose of making a record, and thereby violates any of the provisions of this title or any rules adopted by the director, shall be, notwithstanding the provisions of title LXII, fined not less than $250 nor more than [~~$500~~] ***$1,000*** and his ***or her*** license shall be revoked for a period of 60 days for the first offense and from 60 days to one year for the second offense. ***After any revocation in which alcohol was involved, the court shall require that the license shall not be reinstated until after the division receives a certificate of installation of an ignition interlock device as described in RSA 265:82-e, which shall remain in place for at least 6 months but no longer than one year.***

4 Negligent Homicide. Amend RSA 630:3, II to read as follows:

II. A person is guilty of a class A felony when in consequence of being under the influence of intoxicating liquor or a controlled drug or any combination of intoxicating liquor and controlled drug while operating a propelled vehicle, as defined in RSA 637:9, III or a boat as defined in RSA 270:48, II, he causes the death of another. ***An offender under this paragraph shall not have a license to drive reinstated until after the division receives certification of installation of an ignition interlock device as described in RSA 265:82-e, which shall remain in place for at least 24 months, or longer if so ordered by the court.***

5 Effective Date. This act shall take effect January 1, 2001.

LBAO
99-0333
2/23/99

HB 713-FN - FISCAL NOTE

AN ACT relative to penalties for multiple DWI offenses.

FISCAL IMPACT:

The Administrative Office of the Courts (AOC), Judicial Council and Department of Safety stated this bill may increase state and county expenditures by an indeterminable amount in FY 2000 and each year thereafter. There will be no fiscal impact on local expenditures or state, county and local revenue.

METHODOLOGY:

The AOC states it is not anticipated this legislation revising penalties for repeat DWI offenders will have a large fiscal impact on the Judicial Branch. To the extent this bill prescribes contempt of court as a remedy for a defendant's failure to abide by a sentence in a DWI case, there will be additional contempt hearings and additional court costs. There is no reasonable way to determine the number of such charges that will be brought.

The Judicial Council is unable to predict the actual number of occurrences of this charge which may result, thus no actual cost can be determined. However, due to the penalty sections which add a potential for contempt of court and 30 days incarceration at a county house of corrections, it will have an impact on indigent defense costs. It is likely the case will be handled by either the public defender or contract attorney, either of whom would be paid the contract rate of $220. If the case is handled by an assigned counsel attorney, the rate would be $60 per hour. Classification is unclear, so a cap cannot be determined. Costs for "services other than counsel" also cannot be determined.

The Department of Safety cannot estimate the number of persons who might become repeat DWI offenders and/or the number of individuals who may be convicted of offenses involving only controlled drugs, and thus subject to the penalties in this bill, therefor the Department is unable to estimate the fiscal impact. In the case of an individual convicted of an offense involving alcohol, the individual is required to pay for the costs of the ignition interlock system.

Amendments

Senate Judiciary
May 8, 2000
2000-4392s
03/09

Amendment to HB 713

Amend the title of the bill by replacing it with the following:

AN ACT relative to ignition interlock systems for certain DWI offenders

Amend the bill by replacing all after the enacting clause with the following:

1 New Sections; Definition of Ignition Interlock Device and Provider. Amend RSA 259 by inserting after section 43 the following new sections:

259:43-a Ignition Interlock Device. "Ignition interlock device" shall mean breath alcohol ignition interlock device, which is a system or device that connects a breath analyzer to a motor vehicle's ignition system. The analyzer measures the concentration of alcohol in the breath of any person who attempts to start the motor vehicle by using the ignition system. The device prevents the vehicle from starting unless the person provides a breath sample with a concentration of alcohol that is below a preset level. The device contains a data-logger which retains records of failures to take or pass the test during the period between recalibrations.

259:43-b Interlock Service Provider. An approved interlock service provider means an entity that installs, services, calibrates, monitors, and provides reports as required by RSA 265:82-e, VI-(c) who is approved by the commissioner of the department of safety to do so; no person shall provide any of the services of an approved interlock service provider without such prior approval.

2 New Subdivision; Alcohol Ignition Interlock Program. Amend RSA 265 by inserting after section 82-d the following new subdivision:

Alcohol Ignition Interlock Program

265:82-e Alcohol Ignition Interlock Program Established.

I. Any person whose license or permission to drive has been revoked or suspended under RSA 265:82-b, I(b), I(c), or II may be required by the court after the period of revocation or suspension to install an ignition interlock device as defined in RSA 259:43-a in any vehicle registered to that person or used by that person on a regular basis, for not less than 6 months nor more than 2 years. Installation and monitoring costs shall be paid by the offender. A certificate proving installation of the device shall be provided to the division of motor vehicles as a condition precedent to reinstatement of the individual's license to drive, and the division may mark the person's license accordingly.

II. Nothing in this section shall prohibit a court of competent jurisdiction from requiring the

installation of an ignition interlock device for any person convicted of a violation of RSA 265:82, where the conviction is not based upon a complaint which alleges prior convictions as provided in RSA 265:82-b, II, but the person is found to have had one or more such prior convictions in this state or in an out-of-state jurisdiction.

III. Any person under the age of 21 whose license or permission to drive has been revoked or suspended under RSA 265:82-b may be required by the court after the period of revocation or suspension to install an ignition interlock device as defined in RSA 259:43-a in any vehicle registered to that person or used by that person on a regular basis, until the age of 21 or for not less than 12 months, whichever is longer.

IV. An ignition interlock device may not be sold or distributed in this state without the device being approved by the commissioner or the department of safety in consultation with the advisory committee on breath analyzer machines established in RSA 106-G, as provided in RSA 265:82-e.

V. The department of safety shall establish rules, pursuant to RSA 541-A, for the approval of ignition interlock devices and for the licensing of approved interlock service providers.

VI. The commissioner shall adopt rules and regulations to create an ignition interlock program protocol that will control the delivery of interlock service in this state under this subdivision. The rules adopted for the licensing of approved interlock service providers shall require that each provider, at a minimum;

(a) Provide recalibration of each device monthly, unless otherwise ordered by the court;

(b) Maintain at least that number of locations across the state for the installation, service, calibration, and monitoring of an ignition interlock device as might be required from time to time by the program operating protocol developed by the commissioner;

(c) Provide periodic reports as determined by the court or in department rules, to the probation office and treatment provider, if applicable; if the offender is not placed on probation, to the arresting agency and the court of jurisdiction;

(d) Retain all data-logger records for 12 months after the end of the period to which the offender is sentenced;

(e) Provide installation and service to those offenders determined by the court to be unable to pay the full cost of an interlock program by reserving for this purpose a hardship credit equal to 2 percent of the service provider's gross receipts, excluding the purchase or rental cost of the interlock device, which credit and free service shall be reported annually to the department; and

(f) Provide a certificate of installation to the vehicle's owner upon installation of the device in a form to be determined by the department's interlock service protocol.

265:82-f Alcohol Ignition Interlock Circumvention.

I. Any person required by the court to drive only a motor vehicle equipped with an ignition interlock device shall not drive any motor vehicle not equipped with this device.

II. A person shall not tamper with, or in any way attempt to circumvent the operation of an ignition interlock device that has been installed in a motor vehicle.

III. A person shall not start or attempt to start a motor vehicle equipped with an ignition interlock device for the purpose of providing an operable motor vehicle to a person who is restricted by law to drive only a motor vehicle so equipped. The provisions of this section do not apply if the starting of a motor vehicle, or the request to start a motor vehicle equipped with an ignition interlock device, is done for the purpose of safety or mechanical repair of the device or the vehicle, and the person subject to the court order does not drive the vehicle.

IV. A person shall not knowingly provide a motor vehicle not equipped with a functioning ignition interlock device to another person whom the provider of the vehicle knows was sentenced to drive only a motor vehicle equipped with an ignition interlock device.

V. Any person who violates the provisions of this section shall be guilty of a misdemeanor.

265:82-g Violating Court Order.

I. Upon written notice, by affidavit, that any person has violated an order of the court with regard to the installation of an ignition interlock device after the period of revocation or suspension imposed in RSA 265:82-b, 265:79, or 630:3, a hearing shall be scheduled within 14 business days of the notice. Pending the hearing and upon a finding of probable cause that a violation has occurred based upon the affidavit, the court shall immediately suspend the defendant's privilege to drive a motor vehicle. After the hearing and upon a finding of violation by a preponderance of the evidence, the privilege to drive shall not be restored until the court is satisfied that the person is in compliance with its order.

II. If it is found that a person required to drive a motor vehicle equipped with an ignition interlock device has failed to comply with any requirement for the maintenance or calibration of the device, or shows a consistent pattern of failures to pass the breath test provided by the device, the court may order a hearing to determine if the person should be held in contempt of court. Upon a finding of contempt, the court may sentence the defendant to up to 6 months in a county department of corrections facility, may make such other orders as necessary to bring about compliance, and may order a further license suspension or revocation for a period of not more than 12 months. The period of suspension or revocation under this section shall be added to any previously ordered suspension or revocation.

3 Reckless Driving; Minimum Penalty. Amend RSA 265:79 to read as follows:

265:79 Reckless Driving; Minimum Penalty. Whoever upon any way drives a vehicle recklessly, or so that the lives or safety of the public shall be endangered, or upon a bet, wager or race, or who drives a vehicle for the purpose of making a record, and thereby violates any of the provisions of this title or any rules adopted by the director, shall be, notwithstanding the provisions of title LXII, fined not less than $250 nor more than [~~$500~~*] **$1,000*** and his ***or her*** license shall be revoked for a period of 60 days for the first offense and from 60 days to one year for the second offense. ***After any***

revocation in which alcohol was involved, the court may require that the license shall not be reinstated until after the division receives a certificate of installation of an ignition interlock device as described in RSA 265:82-e, which shall remain in place for at least 6 months, but no longer than one year.

4 Negligent Homicide. Amend RSA 630:3, III to read as follows:

III. In addition to any other penalty imposed, if the death of another person resulted from the negligent driving of a motor vehicle, the court may revoke the license or driving privilege of the convicted person for up to 7 years. *In a case in which alcohol was involved, the court may also require that the convicted person shall not have a license to drive reinstated until after the division of motor vehicles recives certification of installation of an ignition interlock device as described in RSA 265:82-e, which shall remain in place for a period not to exceed 5 years.*

5 Duties of the Advisory Committee on Breath Analyzer Machines. Amend the introductory paragraph of RSA 106-G:1 to read as follows:

106-G:1 Committee Established. The advisory committee on breath analyzer machines is hereby established. The committee shall establish priorities and guidelines for the distribution by the department of safety to municipal police departments of breath analyzer machines to test alcohol concentration. The committee shall periodically review the usage and performance of the breath analyzer machines currently in use in this state and make recommendations to the commissioner of safety on the adequacy of the machines and the needs of the state and municipalities for new machines and technology. *The advisory committee shall monitor the alcohol ignition interlock program established pursuant to RSA 265:82-e and the operation of the service providers, and propose further legislation as deemed necessary.* The committee shall consist of the following members and shall elect a chairman from its membership:

6 Effective Date. This act shall take effect January 1, 2001.

2000-4392s

AMENDED ANALYSIS

This bill establishes an alcohol ignition interlock program for certain DWI offenders.

Committee Minutes

Date: March 29, 2000
Time: 11:48 a.m.
Room: Room 103, State House

The Senate Committee on Judiciary held a hearing on the following:

HB 713-FN relative to penalties for multiple DWI offenses

(2nd New Title) relative to ignition interlock systems for certain DWI offenders and increasing the penalty for reckless driving

Members of Committee:

Senator Pignatelli
Senator Gordon
Senator Wheeler
Senator Squires
Senator Trombly
Senator Brown
Senator Cohen
Senator Fernald

The Chair, Senator Pignatelli, opened the hearing on HB 713-FN, by calling on Representative Almy, the prime sponsor, to provide testimony.

Representative Almy: Thank you, Madam Chair. This bill is to introduce the alcohol ignition interlock system into New Hampshire.

This device is used, I think it is forty states and counting at this point, in the country, but not in New England. Maine passed the law two years ago and repealed it because they hadn't gotten it to work. New York has a law that allows counties to set up their own programs and Long Island has a very successful program. But, other counties haven't really taken it up yet. I think Connecticut or Rhode Island, one of them, passed the law but passed nothing in it to implement it and therefore, there are no companies there offering an interlock and therefore no judges can use it.

It has been very successful in about a third of the states that have passed the law so far. Other states, it is like New York, that only county has gotten its act together and figured out how to implement it. And, about a third of them they didn't allow local option and nobody is doing it, except maybe one judge will send people across the border to another state that has it to get an interlock.

What it does is it acts instead of a nanny or probation officer that sits next to the guy whenever he gets into the car...

Unidentified speaker: Or woman.

Representative Almy: Or woman. I tend to say man because they are more often caught at this, but there are women caught at this also, as you know.

When you start the car, you have to breathe into the device. If you have more than 1 or 2% alcohol on your breath, which is enough to stop most of the problems that you have been spraying yourself with hairspray fairly soon before or gargling mouthwash, then it will not start. You have to wait a specified number of minutes before you can try it again. You then try it again and, if it was hairspray too recently or something, then it will start and you can travel. If you go down the road and you stop and keep the motor running and have a beer or vodka or something, then you continue driving, in another few minutes you are going to get a buzzer sound which comes within the first ten to fifteen minutes of driving and then about every half hour thereafter and you will have to breathe into it again. If you don't breathe into it or you breathe into it and you have alcohol on your breath, the horn will start to beep and the lights will start to flash until you pull over and stop the car, at which point it will not start again until you have got your breath alcohol level down low enough to keep going.

You could get around this by having someone in the car that you could physically intimate to sit there while you were drunk driving and blow into it for you. You would be likely, if you didn't have the device on, to be driving with that person anyway. So, this is a way to get around it, but it doesn't occur terribly often and it is not really a reason not to use the device.

If this is on a car and other people in the family have to use the car, other people in the family have to learn to use the device in order to drive it. The device is fixed onto the car with bolts and shrink-wrap. This was demonstrated to us by a man that came up from Maryland, one of the service providers, in February, I think it was. The shrink-wrap has proprietary names all over it so that it is virtually impossible to tamper with except in such a way that it will be noticed later.

Once a month or, in some states, every two months, the person has to go into the service center and there will be service centers within an hour to an hour and a half of anyplace in this state. He or she has to, the device gets downloaded. It has been recording all of the person's starts when he drives, when he or she breathes into it and messes up, when she does it and five minutes later, she is OK, so it was obviously just a false positive. The service provider downloads it. In normal cases in other states, that download is sent automatically to the person's probation officer and treatment provider, if there is one.

Under this bill, which is the only point of contention we really have, because our probation service is extremely limited, I said it would go to the arresting agency and a copy to the court and to the probation, if probation was available. At that point in other states, what I am told happens is that the person calls up the offender and says, "Hey, you messed up". Usually this happens in the first month that they are using the device and they don't get a false positive again. They don't fail the test again. They learn to do their drinking at some time when they aren't going to be driving.

This learning does not continue past the time that they get off the device. It is only, it works as long as the device is on, but once they are off, the evidence from the research that has been done is that they relapse. Other states are trying combinations of more treatment with the device and trying the device on first-time offenders to see if people will learn when they are first-timers versus repeat offenders.

In Maryland this device was tested in the one completely scientific controlled randomized trial with several thousands assigned randomly to either complete license suspension or to the interlock device. These were people that had already offended at least twice. They had one-third as many subsequent DWI pick-ups for the people on the device as they did for the people who were on suspension during the time that they were suspended or on the device. But, as soon as the suspension and the device ended, they both went back to the same number.

So, this is a temporary fix, but it is a lot cheaper temporary fix than putting someone in jail for a year. Both MADD and T21 now include this in their programs. The difficulty of making it work is that you have to have state regulations to approve the device. There are eight manufacturers and there are more models. To approve the service providers of which there are at least hundreds. There are a number of different service providers. I have found four of them at this point. They don't advertise as much on that. Contract to

your local car mechanic or a certain city in some states, some other groups that are around the state.

The man that came up from Maryland in February said that before he went back he was going to start contacting these people. Some of these service providers have been rather shady. There is a state out in the Midwest that allows people to have the devices sent in by mail to be downloaded, which makes them very easy to tamper with. So, you need state regulations for the service providers as well as the devices and you need some state monitoring of the providers. You need laws that are going to encourage the judges and state prosecutors to apply the device. I have been trying to figure out how much would get us in New Hampshire enough people to attract more than one service provider and I think that five hundred cases a year would do it on a continuing basis.

The bill, as amended by the House, sets up most of what is needed. It leaves the decision about the device criteria to the Department of Safety, which is now, originally had requested to be the authorizing agency, but now it is not sure whether it wants to do it or wants Health & Human Services to do it.

The bill does not remove any of the existing DWI penalties. Instead, it allows a judge to add the interlock for anyone coming off alcohol-related revocation or suspension and it mandates it for reckless driving and vehicular negligent homicide cases in which alcohol was involved. Now this is the bill, as it came out of the House.

It is most important, in fact, in my opinion, it would be in reducing drunk driving by repeated first-timers. We have discovered in both the Criminal Justice Committee and Finance Committee people went off and talked to judges, talked to police, talked to state troopers. There is a lot of people who are picked up for the second or third time who end up with a conviction. This would allow them to be put on the interlock after they get the first time. The reason they are put on the first time is that we have put in a law that says that if you are second timer you lose your license for three years and, if you are a third timer, you lose it for seven years and most people in this state can't work unless they can drive. So, either somebody gets soft on them in the process or they hire a lawyer, which I understand costs $5,000, who can mess up the system and back up the court schedules for long enough and with the police it is overtime such that people aren't going to stop.

So, this would allow those second first-timers to go onto the interlock, which would provide some measure of safety to the public and maybe teaches them something.

The cost of the device in other states is $50 to $60 for installation and $2 a day for monitoring. This is dwarfed by the average $375 per month spent on alcohol by low-income drunk drivers surveyed in Texas. In five other states, the bill requires service providers to reserve 2% of the revenues to pay for any indigent that is sentenced by the court. I understand that in other states this is used very rarely, but it is reserved by the service providers as necessary.

Because, in the bill, the service providers would only be recording tampering and major patterns or failure to pass the test, the paperwork to the courts and police is expected to be minor and directly related to improving safety.

I have now got estimates from three service providers, from three of the four national providers I have found. Say that it is about 5% of the total on the interlock per month and with the kind of positives that would generate the report in this state. So that would be about sixty people per month if we were talking about 1,200. I thought that spread around the state that this would be a very minor burden, at least on the courts, rather than getting twelve reports a year on each interlock person. They would have to then refile somewhere.

After consultation with a breath analyzer committee and further discussion with various members of the House Criminal Justice and Safety and service providers elsewhere, I am proposing further amendment of the House bill for you to consider. I haven't taken it to Legislative Services yet, except for the small piece that I did immediately after the House had to deal with the House Finance Chair.

The issues covered by the full amendment, which is also in front of you, the gray parts are originally redlined to make them stand out. That is the parts that are different from the House bill. We changed the title because we forgot to do it in the House to reflect what the bill is actually about.

Please see "HN 713/A: proposed amendments for Senate (new wording underlined and red-lined) Almy 4/25/00", attached hereto and referred to as Attachment #1.

In Section 2, it says that true first-time offenders cannot be sentenced to the interlock unless they are under twenty-one years of age. The maximum sentence is reduced from three to two years, except that a youth will remain on the interlock until twenty-one or for one year, if that is longer. Reports to the arresting agency and court will only occur if probation is not available. At the request of the Chair of House Finance, clarifying what was Section 3, but is now Section 6(e), underlined, indigent fund is paid by providers as intended originally.

Section 3 I had made the anti-search prevention in places where it really should have been shall. The Committee pointed that out.

And Judge Kelly changed the violating court order language so that it would be more usable by the Court and I passed that, also passed that by David Welch and John Stephen.

Section 4 of the mandatory interlock on reckless driving is changed to optional and Section 5 the same thing happened for negligent homicide and it was put in a section where it made more sense than the one that it was in originally. Section 6 adds duties to the breath advisory committee to oversee the program.

On the final page of that proposed amendments for the Senate is a further amendment which I put in because I didn't believe that Mr. Stephen would be able to be here today to do it himself, which is the proposal by the police chiefs and the Department of Safety to insist that this could not be done unless probation is standard.

I have a great deal of difficulty with that for fiscal reasons. As a policy reason, I think it is great. For fiscal reasons, I believe that it is impossible to do it unless we increase the number of people in the probation department and I do not see any way that we could do that, at least until 2002. I have started to talk with other people. Representative Welch is seriously considering the idea of starting a study committee on probation as a whole because there seem to be other issues that we cannot afford to do at this point, but that really ought to be done. But, I firmly believe myself that we could go forward with this using the police as the mechanism to call up somebody in their town and say, "Hey, you messed up this month". The people that would mess up after the first two months would almost entirely be the people the police are going to see anyway and it is better to see them this way than to see them crashing into a tree.

So, I would like to see this go forward which says that, if probation is there, but to let it go forward without probation being mandatory, which I think would result in too few cases being sentenced to the interlock for the interlock to become commercially liable.

I just wanted to, I borrowed this from another service provider in Maryland. I wanted to show you. You have two pictures there of devices that are a little less bulky than this one, but this is the interlock itself that we are talking about. There is a disposable pipe to blow through and this is what is in the car itself. The rest of this stuff is under the hood attached with that kind of

proprietary wrap tape, shrink-wrap that you can't, if you cut it, everybody will know. I don't know if anybody is going to want to look at this thing.

The man who came in February demonstrated, he came up in his car and we had a number of, John did you, I didn't try it, but we had several people try it. The service provider himself failed the test the first time, but the Representatives didn't. But he didn't do it a second time. His device requires a special hum that you have to get right before you breathe in order to keep random people from blowing into it. Other devices, including this one, I believe, don't have that particular hum. That is one of the options that we would like to leave up to whichever committee would be doing the rules.

Senator Trombly: Why do I get the feeling that Senator Wheeler would like to have one of those in place for gambling?

Representative Almy: There is a company in New York that is just emerging from a bankruptcy that is marketing this now as well as to any states they can find. They are marketing it to parents to put on the cars of their youngsters. I understand this is a profitable sideline in a number of other states. Except, if you wanted to borrow their car, you would have to do it too.

Thank you very much.

Senator Pignatelli: Representative Almy, did you model this legislation on another state?

Representative Almy: I looked at a number of states' provisions and I didn't specifically model it on any state. I took things from a number of them and practically every word in this has been changed since Version 2, which was when I concentrated on the interlock and left out all of the fancy stuff from the original bill, because I had been talking to the people at the Department of Safety, to the judges, to various policemen, to the Police Chiefs Association, to a whole range of people about things that I hadn't originally considered. It did require a fair amount of modification to work within New Hampshire's structure and I think that may be why it failed totally in Maine.

Senator Pignatelli: Representative Almy, you said that the Department of Safety is not sure it wants to be in charge of this. Have you talked to the Department of health & Human Services?

Representative Almy: Well, I just learned that this morning. I have been waiting to hear for two weeks. John Stephen is here and he can talk about that.

Senator Pignatelli: Senator Wheeler has a question.

Senator Wheeler: Thank you, Madam Chair. Representative Almy, I apologize for being late. I was at a House hearing. With the amendment that you have introduced to us, is it your impression that the House is interested in this amendment?

Representative Almy: I have discussed anything that I thought was a philosophical difference, such as changing it to just repeat offenders, with the Chair of Criminal Justice and sometimes with Representative Christie and sometimes with Representative Tholl. I think that they are, but they are just getting this final version today also. I just finished it last night because I was waiting to hear some final figures on what the false positives are from the service providers.

Senator Wheeler: Just a follow up. I guess what I want to make sure is that it wasn't something that you have already tried in the House and it was defeated by the House committee?

Representative Almy: No.

Senator Wheeler: They are also learning about this as we are?

Representative Almy: Yes.

Senator Wheeler: Thank you.

Senator Pignatelli: Further questions? I don't see any. Thank you, Representative Almy. Representative Norma Sobella? Welcome.

Representative Sobella: Good morning, Madam Chairman and members of the Committee. Aside from the material and factual evidence that Representative Almy has presented, the only comment that I have, in addition to that, is that I feel that this brings to the offender, it is rather like tying a dead chicken around the neck of a dog that chases chickens. Eventually the chicken will begin to decay and the dog will have some future aversion to chasing chickens. This brings to the offender a constant reminder of the offense.

Therefore, behavior modification wise it imprints on their mind and psyche that they have done something that is wrong and that they are made to bear the consequences of, especially two consequences, that they will pay for the installation and the data recording. Most of us, we seem to jolt when we have to pay for our past behavior and it will remind them constantly that they

have done something and that they will not be able to do it again without more serious consequences.

Senator Pignatelli: Thank you, Representative Sobella. I don't see any questions. Representative John Tholl?

Representative Tholl: Thank you, Madam Chairman and members of the Committee. For the record, my name is John Edward Tholl, Jr. I represent Coos District 5, the towns of Dalton and Whitefield.

Tape change...

...twenty-nine years of law enforcement experience in the state, twenty-three years of that being with the Department of Safety, Division of State Police. I would like to indicate first off that I am here speaking for myself, not for the Chiefs Association or any representative of that association.

In the last twenty-nine years, my experience with the drunken driver has resulted in excess of 700 DWI arrests and 96% of those have been convictions. I have had occasion to arrest the same people multiple times. In one case, I finally, over the years, arrested a gentleman for the third time for DWI. I support this bill and the concept. I believe that it is a positive step for behavior modification of people who are involved in alcohol. I think that the experience in other states, I have seen some bad examples from California and some other states where you have, I have seen some video information on public broadcasting indicating that some people who were using them in California were talking about how many times they had driven drunk before they got caught. One lady was telling that she had driven at least two thousand times under the influence before she finally got caught and sentenced to the interlock. Initially, for her, it was a very demeaning thing. However, after using the device for a period of time, she did come to believe that this was a positive step in her life and she was trying to improve herself.

I think that this device has the ability to alter attitudes and behaviors to a certain degree. It is not going to be 100%, but I think it is a god step. I am quite sure that no matter what we do, it is going to require further looks at things. In fact, one of the things I am doing is trying to get a study committee over the summer on punishment for DWI along with Representative Almy. I am quite sure this matter will be addressed as part of that study committee and also anything that we feel might necessarily need to be looked at. However, I do feel that this bill has a lot of good parts and should be enacted into law.

Senator Pignatelli: How long does the interlock device stay in the car after it has been mandated?

Representative Tholl: It depends upon the length of time that is mandated by the Court. If the Court says it has to be there a year, it has to be there a year, as far as mandating.

I am quite sure that, depending upon the circumstances, somebody could actually ask for one and pay for it. Like the testimony indicated, I can see some parents wanting to have in their kids' cars. But, it will be whatever the Court mandates.

Senator Pignatelli: Any further questions? I don't see any. Thank you for coming.

Representative Tholl: There is one thing I would like to point out. I was there when they did the demonstration and that particular instrument that he had you had to learn the procedure in order to make it work. You had a kind of hum and then blow at a certain rate so that you had a certain curve and it was not something that you could grab somebody off the street and have them sit down and do it. I think that is one of the reasons why that was built into that particular device, so that you couldn't just have a guy who is riding with you decide to blow into the machine and make it work.

Senator Pignatelli: Some of us who can't carry a tune might have trouble learning it. Senator Wheeler would have no problem. Thank you very much. Jerry Gearan? Did I get your last name right?

Jerry Gearan: Yes. Thank you, Madam Chairman and Senators. My name is Jerry Gearan and I am on the New Hampshire Highway Safety Commission. I have been on it for fifteen years and I serve as its legislative chairman. We have long been involved with DWI issues and generally favor each and every one of them and have so testified over the years.

The Committee discussed this bill at their March meeting and it was one of the first times that I don't think we could agree to either favor or oppose. What the concern was to get this thing right when we go in. I am extremely impressed at the work Representative Almy has done and I commend her. She certainly has done a lot of thinking about this bill. We just want to make sure it gets in right and, in her testimony, she mentioned that in Maine the bill was approved and then repealed in the next session. We wouldn't want that to happen. A lot of us had a lot of questions. A lot of them she answered for me today that I wish our Committee could hear. We would like to have a demonstration. One of the most outstanding things that happened in this

state with the passage of .08 was a demonstration of the breathalyzer test to the members of the House and the Senate back them and I think it was instrumental in passing .08. I wish that we could have sat in on the demonstration that she had in February.

I guess all I would say is, at this point, our Committee would favor further study to get the legislation so that it would work. We don't oppose the theory in any way and we very seriously take to heart our responsibility as the Highway Safety Commission on DWI issues. That is our wish washy testimony. I wish we could say we are either opposed or against (sic), but that was the decision of the group.

Senator Pignatelli: Has your group seen the latest amendment?

Mr. Gearan: No, we have not.

Senator Pignatelli: When does it meet again?

Mr. Gearan: It will be meeting, I think, late in April, not April, it would be early May. So, we would be glad to look at it.

Senator Pignatelli: Maybe you could present your Committee with the latest amendment?

Mr. Gearan: Yes. We would be happy to.

Senator Pignatelli: Thanks. Representative Barbara Hull Richardson is in support of the bill, but does not wish to speak, as does Bill Butinski from New Futures. Next I will call on John Stephen from the Department of Safety.

Assistant Commissioner John Stephen: Thank you, Madam Chairman and members of the Committee. My name is John Stephen, Department of Safety, Assistant Commissioner.

First of all, we discussed this issue at length at the Breath Advisory Committee hearing and we appreciate this Committee giving us this opportunity to speak, so that the Breath Advisory Committee, which is a part of this bill, would have the opportunity to consider the issues. They haven't met yet. It involves representatives from the Senate and the House. The Breath Advisory Committee, I act as Chairman, oversees the entire program of the intoxilyzer placements in the State of New Hampshire, breath machines, so it is very similar and germane.

First, the Committee as well as myself, I would like to applaud Representative Almy for her efforts in trying to solve a problem that we have all come to see as a major and serious problem in this State. We don't need to go into that, but I am sure you are all aware of that.

This issue was discussed thoroughly and the Committee did not take a position on support or oppose. There were so many questions that came out of the Committee. The Chiefs had a number of issues that they basically wanted this Committee to know that the issue may need to be looked at further. There were a number of amendments that came in subsequent to that meeting and I think a lot of them were just because of the Committee's concerns. Some of the issues that the Committee had involved who is going to monitor the program. I think they were concerned that probation needs to be a part of this program. By just putting the interlock device in the statutes and letting the courts order it is not going to be solving the problem, because the law enforcement authorities can't monitor this. They don't have the resources to monitor it and they are not equipped to do all the actual monitoring. It should be a probation type effort and that is what we feel.

I have spoken to the Commissioner of the Department of Safety and the Commissioner thinks the original version, that is what he was looking at, he thought that there a number of issues that need to be really looked at further and before we go passing a law, maybe look at it and study it further.

There have been some changes though and Representative Almy, throughout this whole process, has been changing this to accommodate a lot of different concerns and issues. I think she has done a great job in doing that. One of the things I think she has done here is the notion that repeat offenders would be looked at first. If you are going to do this as a first step, the original version had all offenses and I think that is a concern. The Commissioner thought that was a concern originally and he had a concern on how widely accepted this program would be and would it be used in cases where it should be used or should not be used, and what the affects would be.

On the rule issue, Representative Almy mentioned that the Department was originally involved with this issue on rules because we were looking at it as if it is a program that is, has merit and is going to go through to protect everyone, that possibly the Department should be reviewing it. But, I think the Breath Advisory Committee's comments and throughout the process the Commissioner has had an open mind, and their comments basically were that they feel that the Department of Health & Human Services, which monitors and does rules on intoxilyzer machines, breath devices, ought to be the agency if this thing were ever to pass, monitoring the program. I leave that

up to you. If you think the Department of Safety should be, the Department of Safety would be there.

But, I think those are some issues that we need to look at and I think that is why the Commissioner is also looking at possibly a further review of this. He hasn't had the liberty of this language and I need to go back and talk to him about it on the repeat offenses.

Also, the reports to an arresting agency. I know the Chief of Police is here from Enfield and he raised that concern on reports going to local law enforcement on the service providers. Again, this is where we think probation should be the one that, if it passes, ought to be monitoring this program and getting the reports. I understand their concern with resources, so we want to work together. There are some issues and I want to make sure I brought these to your attention.

Finally, the Attorney General's Office, represented by Connie Stratton at that Committee, brought up some issues that they felt needed further review. Again, the Representative has made a number of changes, so looking at these changes this morning and looking at where we are going to go if this were to pass, you are talking about potentially five to six hundred cases. The minors is something new that I haven't had a chance to talk the Commissioner or the Committee. I guess Judge Kelley wrote a letter to the Committee. I am not sure exactly I can answer any questions you want. Statistics with regard to minors. We are having a real problem in this state. No question that that is a problem right now. But, should we be giving the judges the carte blanche authority to order this in any case involving a minor? I again leave that up to you and that is an issue that needs to be looked at.

Again, I would like to just say that I commend the Representative for bringing this whole issue forward. It has made us all look at it a lot closer. But, these are the issues that I think you need to look at. I would be willing to help and work with the Committee or answer any questions.

Senator Pignatelli: Senator Brown?

Senator Brown: Thank you. In looking at all the work that has been done on this bill and the fact that forty states have implemented some form of it, doesn't it make sense to do the best we can to put this program in place and then, if there are problems, work them out? I am thinking about the harm that is probably going to be done by drivers who don't have something like this between now and whenever we get through studying and figuring out who is going to be in charge and what is going to happen. How do you feel about that?

Assistant Commissioner Stephen: Well, Senator, that is a good point. Again, if we pass anything, I want to make sure, from the Department's standpoint as well as the citizens, that we make sure it is the right language and we are not going to have to come back and change it. Secondly, that we pass something that we know is going to work. Those are my issues.

Now, in answer to your question, one of the issues that were brought up, and he is here to testify at the Committee hearing, was the tampering. I know we have some language in here, but how are we going to enforce the tampering without having the probation component there every so often, watching them, making sure they are complying? How do you enforce that? How is law enforcement going to enforce it? That was an issue that was raised.

But, I do agree with you that to take an initial step in the right direction is absolutely where we want to go.

Senator Brown: Thank you.

Senator Pignatelli: I don't see any further questions. Thank you. The Chief of Police from Enfield? I'm sorry. I don't know your name.

Police Chief Peter Giese: I am the Chief of Enfield and I am here this morning to represent the New Hampshire Association of Chiefs of Police.

I did discuss this matter at the meeting in Keene, New Hampshire, at the general meeting of the Chiefs of Police, and I told them basically what I am going to say here this morning, and there was no further discussion.

Again, looking at it from my personal perspective, I think that this is a very positive thing. We are in the business of protecting people, whether it be somebody who is intoxicated or a citizen from somebody who is intoxicated. It is really great to come down here and say positive things. I would like to say that Representative Almy has done work on this. I think that she should be commended. She has been in my office many times.

What I mean by positive, I think that we are kind of throwing the ball into the person who has a problem with it and I would like to look at what one of the Representatives said this morning, that it is kind of putting a chicken around this person's neck. But, another little side issue, right now we are doing a lot of breath tests for people who have visitation rights for their children. One progressive Superior Court judge and what she is doing is that she requires the person on weekend visits to come into the station and have a breath test before they pick up their children. You know, this is a real

positive thing. First of all, the person won't be drinking because they know they are going to be tested and things are working out real good.

And, that is what I kind of looked at this whole program as. I think it is something that the person knows that when they get into that motor vehicle, they can't be drinking. Again, I think this is very important.

Some of the things that I would like to see in the bill and, again, I sit here and I don't want to be throwing water on a good idea and this is a good idea. But, I think we ought to have this thing well worked out. We don't want to produce anything that has a loophole and somebody gets hurt and then Giese gets on the front page of the *Union Leader* because I spoke or gave somebody a breath device that didn't work. I think we all know where we are coming from. We want to do this and we want to do it right.

From the Chiefs' standpoint of view, we would really like to see probation involved here, for several reasons. As a police chief, I arrest people and, in a lot of our small communities, we have to prosecute people. We are in this process all the way through it and it is an expensive process. I would just like to see probation. Probation has the tools and the means to monitor this and they have people that are trained in this. I think it will be labor intensive, to some degree. You are going to have to go and check these instruments, you are going to have to write out warrants and complaints and go out and arrest people, all of which does take time.

Also, like Commissioner Stephen said, I think we should have these instruments monitored by the Department of Public Health, just like we do breath machines. These people are very capable of doing that and I think they should retain that.

I guess on a lot of these things I would like to see a lot of people involved in this so that we don't have just the Department of Safety and the police doing all of it. I think we should call upon our chemists, we should call upon our probation officers.

But again, I sit here and repeat myself. This is a good idea. You know, it is a problem and we have all heard this time and time again and I have been a cop really a lot longer than like twenty-nine years. I know, for one thing, we cannot arrest our way out of this problem because we have some people, I am sorry, the only way I can keep them from drinking and driving is if I had them in the Grafton County House of Corrections. Otherwise, they are driving. It is as simple as that. Maybe this device might fit in there. It may fit and it will keep us from arresting somebody. It will keep us from calling the ambulance.

So, again, let's do it right. It is a good idea. Thank you very much.

Senator Pignatelli: Thank you for your testimony. I note Bruce Berke, lobbyist representing Philip Morris and Miller Brewing Company, supports the bill, but does not wish to speak. Does the Department of Health & Human Services have something to say?

Susan Langle: Thank you. Susan Langle from the Department of Health & Human Services. I work with the Division of Alcohol and Drug Abuse Prevention and Recovery.

The Department has not taken a position on this bill although we recognize and applaud Representative Almy for bringing this forward. Prevention and treatment and enforcement all need to work together to address the serious issue that abuse of alcohol presents to our society. I don't know that the Department has the capacity to undertake the monitoring and rulemaking that this bill would require.

I will take Representative Almy's further amendment to the bill back to the Department and get you a sense of our capacity to undertake this additional responsibility. We don't have a position on the bill other than to recognize that it is a good faith effort to try to deal with a very difficult problem.

Senator Pignatelli: Susan, can you get back to us by next Thursday afternoon?

Ms. Langle: Yes, I can.

Senator Pignatelli: Is Assistant Commissioner Stephen still here? Thank you very much. Is there anyone else who would like to testify on this bill?

Don Peno: I guess I should say a few words here. My name is Don Peno. I am the Director of Administration for the Department of Corrections. Madam Chairman and members of the Committee.

Certainly, being in the business of public safety, I applaud the intent of the bill. It is a good bill and something that needs to be done. My only concern, or our Department's only concern, would be if the estimated 500 to 600 people were given to our probation department to monitor the program, we would be very hard pressed to do it with the existing resources we have. I believe that Representative Almy already addressed that issue, but I just wanted to let you know that that would be a concern.

We, as a department and as a division of probation, have not discussed this bill. Certainly, we haven't seen the latest amendments.

I just wanted to make that clear.

Senator Pignatelli: Senator Brown?

Senator Brown: Yes. I was just wondering if it could in fact turn out to be a time saver for probation officers. I don't know what you do now for following up on folks who are on probation for driving under the influence. But, is this a reporting system that might actually in the end, save rather than cost money?

Director Peno: What an average probation and parole officer does, in most of these cases, see these people in the office. The people would come and make regular office visits once a week, once every two weeks, once a month, depending on the court order and the severity of the offense.

If any additional duties are added onto that and I don't know how many of the DWI cases that we now handle and how many more would handle. If that were to involve an additional 300, 400 or 500, that would require more resources. We do monitor, we have this electronic monitoring program, so we are in the business of doing these types of things, so we are familiar with that and we are kind of experts at that.

Senator Brown: Thank you.

Senator Pignatelli: Thank you for your testimony. Is there anyone else who would like to testify for a first time? Representative Almy, did you have something else you wanted to say?

Representative Almy: Thank you. I just wanted to say that I have been told by Judge Kelly that very few of the DWI cases are put on probation and John Stephen also said that, and that is the main problem. This would actually require vastly less work than electronic monitoring, but just the simple intake of 500 to 600 extra people into the probation system at this point sounds like something they would have trouble handling.

Senator Pignatelli: Thank you. Is there anyone else who would like to testify on HB 713-FN? I don't see anyone and I am going to close the hearing.

Hearing concluded at 11:50 a.m.

Respectfully submitted,

Recorded by Laurel Hanlon
Transcribed by L. Gail Brown
8/6/02

1 Attachment

ATTACHMENT #1

HB 713/A : proposed amendments for Senate (new wording underlined and red-lined)

Almy 4/25/00

An Act relative to ignition interlock systems for certain DWI offenders

1 New Sections; Definition of Ignition Interlock Device and Provider. Amend RSA 259 by inserting after section 43 the following new sections:

259:43-a Ignition Interlock Device. "Ignition interlock device" shall mean breath alcohol ignition interlock device, which is a system or device that connects a breath analyzer to a motor vehicle's ignition system. The analyzer measures the concentration of alcohol in the breath of any person who attempts to start the motor vehicle by using the ignition system. The device prevents the vehicle from starting unless the person provides a breath sample with a concentration of alcohol that is below a preset level. The device contains a datalogger which retains records of failures to take or pass the test during the period between recalibrations.

259:43-b Interlock Service Provider. An approved interlock service provider means an entity that installs, services, calibrates, monitors, and provides reports as required by RSA 265:82-e, VI(c) who is approved by the commissioner of the department of safety to do so; no person shall provide any of the services of an approved interlock service provider without such prior approval.

2 New Subdivision; Alcohol Ignition Interlock Program. Amend RSA 265 by inserting after section 82-d the following new subdivision:

Alcohol Ignition Interlock Program

265:82-e Alcohol Ignition Interlock Program Established.

I. Any person whose license or permission to drive has been revoked or suspended under RSA 265:82-b, I(b), I(c), or II may be required by the court after the period of revocation or suspension to install an ignition interlock device as defined in RSA 259:43-a in any vehicle registered to that person or used by that person on a regular basis, for not less than 6 months nor more than 2 years. Installation and monitoring costs shall be paid by the offender. A certificate proving installation of the device shall be provided to the division of motor vehicles as a condition precedent to reinstatement of the individual's license to drive, and the division may mark the person's license accordingly.

II. Nothing in this section shall prohibit a court of competent jursidiction from requiring the installation of an ignition interlock device for any person convicted of a violation of RSA 265:82, where the conviction is not based upon a complaint which alleges prior convictions as provided in RSA 265:82-b, II, but the person is found to have had one or more such prior convictions in this state or in an out-of-state jurisdiction.

III. Any person under the age of 21 whose license or permission to drive has been revoked or suspended under RSA 265:82-b may be required by the court after the period of revocation or suspension to install an ignition interlock device as defined in RSA 259:43-a in any vehicle registered to that person or used by that person on a regular basis, until the age of 21 or for not less than 12 months, whichever is longer.

IV. An ignition interlock device may not be sold or distributed in this state without the device being approved by the commissioner of the department of safety in consultation with the advisory committee on breath analyzer machines established in RSA 106-G, as provided in RSA 265:82-e.

V. The department of safety shall establish rules, pursuant to RSA 541-A, for the approval of ignition interlock devices, and for the licensing of approved interlock service providers.

VI. The commissioner shall adopt rules and regulations to create an ignition interlock program protocol that will control the delivery of interlock service in this state under this subdivision. The rules adopted for the licensing of approved interlock service providers shall require that each provider, at a minimum:

(a) Provide recalibration of each device monthly, unless otherwise ordered by or the court;

(b) Maintain at least that number of locations across the state for the installation, service, calibration and monitoring of an ignition interlock device as might be required from time to time by the program operating protocol developed by the commissioner;

(c) Provide periodic reports as determined by the court or in department rules, to the probation office and treatment provider, if applicable; and if the offender is not placed on probation, to the arresting agency and the court of jurisdiction;

(d) Retain all data-logger records for 12 months after the end of the period to which the offender is sentenced;

(e) Provide installation and service to those offenders determined by the court to be unable to pay the full cost of an interlock program by reserving for this purpose a hardship credit equal to 2 percent of the service provider's gross receipts, excluding the purchase or rental cost of the interlock device, which credit and free service shall be reported annually to the department; and

(f) Provide a certificate of installation to the vehicle's owner upon installation of the device in a form to be determined by the department's interlock service protocol.

3 New Subdivision; Alcohol Ignition Interlock Penalties. Amend RSA 265 by inserting after section 82-e the following new subdivision:
265:82-f Alcohol Ignition Interlock Circumvention
I. Any person required by the court to drive only a motor vehicle equipped with an ignition interlock device shall not drive any motor vehicle not equipped with this device;
II. A person shall not tamper with, or in any way attempt to circumvent the operation of an ignition interlock device that has been installed in a motor vehicle.
III. A person shall not start or attempt to start a motor vehicle equipped with an ignition interlock device for the purpose of providing an operable motor vehicle to a person who is restricted by law to drive only a motor vehicle so equipped. The provisions of this section do not apply if the starting of a motor vehicle, or the request to start a motor vehicle, equipped with an ignition interlock device is done for the purpose of safety or mechanical repair of the device or the vehicle

and the person subject to the court order does not drive the vehicle.
IV. A person shall not knowingly provide a motor vehicle not equipped with a functioning ignition interlock device to another person whom the provider of the vehicle knows was sentenced to drive only a motor vehicle equipped with an ignition interlock device.
V. Any person who violates the provisions of this section shall be guilty of a misdemeanor.

265:82-g Violating Court Order
I. Upon written notice, by affidavit, that any person has violated an order of the court with regard to the installation of an ignition interlock device after the period of revocation or suspension imposed in RSA 265:82-b, RSA 265:79 or RSA 630:3, a hearing shall be scheduled within 14 business days of the notice. Pending said hearing and upon a finding of probably cause to believe the violation has occurred based upon the affidavit, the court shall immediately suspend the defendant's privilege to drive a motor vehicle. After hearing and upon a finding of violation by a preponderance of the evidence, the privileges to drive shall not be restored until the court is satisfied that the person is in compliance with its order.
II. If it is found that a person required to drive a motor vehicle equipped with an ignition interlock device has failed to comply with any requirement for the maintenance or calibration of the device, or shows a consistent pattern of failures to pass the breath test provided by the device, the court may order a hearing to determine if the person should be held in contempt of court. Upon a finding of contempt, the court may sentence the defendant to up to six months in the house of corrections, may make such other orders as necessary to bring about compliance, and may order a further license suspension or revocation for a period of not more than twelve months. The period of suspension or revocation under this section shall be added to any previously ordered suspension or revocation.

4 Reckless Driving; Minimum Penalty. Amend RSA 265:79 to read as follows:
265:79 Reckless Driving; Minimum Penalty. Whoever upon any way drives a vehicle recklessly, or so that the lives or safety of the public shall be endangered, or upon a bet, wager or race, or who drives a vehicle for the purpose of making a record, and thereby violates any of the provisions of this title or any rules adopted by the director, shall be, notwithstanding the provisions of title LXII, fined not less than $250 nor more than ~~$500~~[1000] and his license shall be revoked for a period of 60 days for the first offense and from 60 days to one year for the second offense. After any revocation in which alcohol was involved, the court may require that the license shall not be reinstated until after the division receives a certificate of installation of an ignition interlock device as described in RSA 265:82-e, which shall remain in place for at least 6 months, but no longer than one year.

5 Negligent Homicide. Amend RSA 630:3, III to read as follows:
III. In addition to any other penalty imposed, if the death of another person resulted from the negligent driving of a motor vehicle, the court may revoke the license or driving privilege of the convicted person for up to 7 years. In a case in which alcohol was involved, the court may also require that the convicted person shall not have a license to drive reinstated until after the division of motor vehicles receives certification of installation of an ignition interlock device as described in RSA 265:82-e, which shall remain in place for a period not to exceed 5 years.

6 Breath advisory committee duties.
I. The advisory committee shall monitor the alcohol ignition interlock program established

pursuant to RSA 265:82-e and the operation of the service providers, and propose further legislation as deemed necessary.

7 Effective Date. This act shall take effect January 1, 2001.

Further amendments suggested by BAC: purpose: limit possible use of interlock to convicted repeat offenders for whom the court is willing to require probation.

2 New Subdivision; Alcohol Ignition Interlock Program. Amend RSA 265 by inserting after section 82-d the following new subdivision:

Alcohol Ignition Interlock Program
265:82-e Alcohol Ignition Interlock Program Established.
I. As a condition of probation under RSA 651:2, V, any person whose license or permission to drive has been revoked or suspended under RSA 265:82-b, I(b), I(c), or II may be required by the court after the period of revocation or suspension to install an ignition interlock device as defined in RSA 259:43-a in any vehicle registered to that person or used by that person on a regular basis, for not less than 6 months nor more than 2 years. Installation and monitoring costs shall be paid by the offender. A certificate proving installation of the device shall be provided to the division of motor vehicles as a condition precedent to reinstatement of the individual's license to drive, and the division may mark the person's license accordingly.
II. Nothing in this section shall prohibit a court of competent jursidiction from requiring the installation of an ignition interlock device for any person convicted of a violation of RSA 265:82, where the conviction is not based upon a complaint which alleges prior convictions as provided in RSA 265:82-b, II, but the person is found to have had one or more such prior convictions in this state or in an out-of-state jurisdiction.

(Renumber I-III to III-V)

[Delete section 4, Reckless Driving, to omit the interlock from any reckless sentence]

Section 2, revised: RSA 82-e (III)(c):
(c) Provide periodic reports as determined by the court or in department rules to the offender's probation office and, if applicable, treatment provider;

Speakers

HB 713-FN Senate Judiciary Hearing Sign In

APPEARING: IN FAVOR	APPEARING: TO OPPOSE	DATE: APRIL 26, 2000 TIME: 10:00 AM NAME / REPRESENTING	WISH TO SPEAK?
		Jerry Gearan NH Traffic Safety Comm Favor further study	Yes Imm
✓		Rep. Norma A Sabella Rock 13 (Derry)	3 asst
✓		Rep. Barbara Hull Richardson Cheshire 12	No
✓		Rep John E Thoill Jr Coos - 5	~~no~~ Yes
✓		~~Ted~~ Susan Almy CR-14	yes
		John Stephen / Safety	yes
		BILL BUTYNSKI - NEW FUTURES	NO
✓		Bruce Berke - Philip Morris + Miller Brewing Co.	NO
		Enfield Chief of Police Peter Giesel - NH Assoc. Chiefs of Police	yes
✓	✓	Susan Langle - DHHS	yes
✓	✓	Don Reno - Dept of Correction	yes

Testimony

Ignition Interlocks Deter Impaired Drivers



by Peter Haapaniemi

Campaigns against drinking and driving have hit home with many people, and the overall fatality rates for intoxicated drivers have declined. But alcohol is still a factor in about 41 percent of fatal crashes, according to the National Highway Traffic Safety Administration. In particular, there is growing concern over the number of people who have recurring problems with drinking and driving. Nationwide, "roughly a third" of those arrested for drunk driving are repeat offenders, says James F. Frank, highway safety specialist with NHTSA's impaired driving division.

For decades, officials have relied on three basic methods for dealing with repeat offenders: revoke their licenses, impound their cars, or put them in jail. In recent years another approach has been finding its way into state programs: the use of ignition-interlock systems. These devices are essentially Breathalyzers linked to a car's ignition system. The driver has to blow into it in order to start the car. If there is alcohol on his or her breath, the car won't start.

Ignition interlocks have been commercially available since the mid-1980s. Today there are an estimated 30,000 in use across the United States. To date, 35 states have passed legislation authorizing their use, but how they are used varies from state to state. In general, those states that have active programs use ignition interlocks to deal with multiple offenders who have had their licenses revoked, and make the use of the device for a certain period of time a condition for re-licensing.

Study shows they work

Despite this widespread use, however, it has been difficult for officials to say whether the devices actually curb drinking and driving – until last spring when the University of Maryland announced the results of its research into that state's ignition-interlock program. The study "indicated that being in an interlock program reduced the risk of an alcohol traffic violation within the first year by about 65 percent," says Kenneth Beck, professor of Health Education at the University of Maryland.

The study is significant because of the population it studied. For the most part, past research looked at people who volunteered to be in a program. Such a population would presumably be predisposed to using the device and changing their behavior. So the Maryland study examined a random sample that was more typical of the overall repeat-offender population. "We did this to test under real-world conditions, where not everyone is going to be a faithful, compliant, good citizen," says Beck.

A University of Maryland study indicated that being in an interlock program reduced the risk of an alcohol traffic violation within the first year by about 65 percent.

The study tracked 1,387 repeat offenders who had lost their licenses, gone through treatment, and been deemed ready for re-licensing on a restricted basis by a medical screening board. They were randomly assigned to either the ignition-interlock program or a control group. "We monitored the one-year traffic arrest rate, and we found that these interlock programs work significantly better than the traditional treatment program at reducing the violation rate for

Photo courtesy of LifeSafer Interlock Inc.

alcohol traffic offenses during that year when the interlock restriction was in effect," says Beck. In the end, 2.4 percent of the drivers using the device were arrested for alcohol-related offenses, as opposed to 6.7 percent of the control group.

Success depends on many factors

In addition to straightforward deterrence, ignition-interlocks are effective because they target a specific aspect of the problem, says Beck. "Previous approaches to dealing with drinking and driving have tried to prevent the drinking. The interlock addresses the point at which a drinking person will try to start and drive a car." It is a deterrent that doesn't simply rely on self-control.

The effective use of interlocks depends on the administrative aspects of a program, as well as the technological strength of the device. Screening, for example, helps make sure that individuals are in a position to benefit from an interlock, and ongoing monitoring complements the devices in making sure that people don't violate the rules of the program. In Maryland, participants had to bring their cars in for inspection every 60 days, allowing technicians to check for tampering and read the device's computer to see how often the car was started, how often breath tests were failed, and so forth. When someone was found to have "cheated" on the program, their license was immediately revoked.

In addition, ignition-interlock programs are often not as expensive or painful as some traditional programs. "We know that vehicle impoundment, incarceration and even license-plate impoundment work. But they are costly, and they are not always applied, because of judicial prerogative," says Beck. Judges are sometimes reluctant to take away a convicted person's car because the person may need it in order to keep a job, or other people in the family may be relying on that driver or the car. An interlock program provides some middle ground where action is being taken to control drunk driving, but the individual and his or her family still have access to a car.

In terms of cost, the interlock devices are usually leased for about $2 a day, which is borne by the individual in the program, rather than the state. "Of course there are some costs associated with a program," says Frank. "But there may well be some savings that are much greater than costs, if you calculate out the reduction in the number of people who are drinking and driving."

Not a cure-all

Ignition-interlock programs are not a miracle cure, however. "It's important to stress that they are an important counter measure, but they are by no means a perfect way of preventing [drinking and driving]," says Beck. The devices can be circumvented, although technological improvements are making that increasingly difficult. Among those arrested in the Maryland study, many were simply driving borrowed cars with no interlocks on. In addition, follow-up research in Maryland suggests that the interlock's effect on behavior is not permanent, and that once the devices are removed, the rate of alcohol-related arrests begins to climb. Beck says such findings suggest that longer-term use of interlocks may be warranted.

Finally, some hard-core repeat offenders will always remain beyond the reach of interlocks, simply because they will continue to drive without a license.

Still, interlocks provide one more tool for getting intoxicated drivers off the road. "There is going to have to be additional fine tuning on how these things are best utilized, but I think the first generation of projects has suggested that they are doing the job of suppressing drinking and driving among people who have them on their vehicles," says Frank. Indeed, NHTSA has committed itself to further research on the subject. "I think the general feeling is that there is a need to pull out all stops on the war on impaired driving," Frank says. "This is one approach that we hope will have some impact. We have to keep chipping away at the problem."

New devices prevent circumvention

Like technology in general, ignition-interlock devices have grown more sophisticated over the years. Older models, for example, reportedly could give false positive readings for alcohol when drivers had only been smoking cigarettes. Newer models are alcohol-specific.

The biggest problem, however, has been human ingenuity. "People always challenge the device," says Richard Freund, president of Cincinnati-based LifeSafer Interlock. As a result, NHTSA guidelines call for anti-circumvention features that counter tactics such as:

False or Filtered Breath Freund says people will try to blow through charcoal, which absorbs alcohol; use balloons to push air through the device; or even breathe through a 2-liter plastic bottle with a hole cut in the bottom in order to force a clean sample into the machine.

To beat such tricks, Freund's company's device requires people to provide a hum tone during the test; other systems require a coded sequence of breathes that is hard to duplicate mechanically.

Fake Test This is essentially having another person, who is sober, take the test and start the car, and then let the intoxicated person drive away. To help prevent this, devices today use a "rolling re-test" that requires the driver to blow into the device at certain intervals while driving. If he or she fails the test, the car's lights begin flashing and the horn starts honking (rather than having the car stop dead in traffic). "It draws attention to the car, and makes it easier for a police officer to have probable cause to pull someone over," says the University of Maryland's Kenneth Beck. The rolling re-test also prevents drivers from going to a bar sober, and leaving their car idling while they go in and drink.

NCSL · LEGISBRIEF

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DRUNK DRIVING PROVISIONS IN TEA-21

By Jeanne Mejeur

The 1998 Transportation Equity Act for the 21st Century (TEA-21) is a complex federal law covering a wide variety of highway safety and transportation issues, including drunk driving. In addition to establishing program mandates, TEA-21 provides for funding incentives for states that comply with the act and penalizes states that haven't met the requirements by Oct. 1, 2000.

States will receive additional highway funds for adopting .08 BAC.

States that adopt an illegal *per se* law establishing a blood alcohol content (BAC) limit of .08 as their legal standard are entitled to additional federal highway funds under TEA-21. Illegal *per se* laws make it a crime to drive with a blood alcohol level above a statutory limit. The amount each state receives is based on the level of its current Section 402 funding. Eligible states will split $500 million in incentive grants between 1998 and 2003.

Currently 17 states have .08 illegal *per se* laws: Alabama, California, Florida, Hawaii, Idaho, Illinois, Kansas, Maine, New Hampshire, New Mexico, North Carolina, Oregon, Texas, Utah, Vermont, Virginia and Washington.

Additional incentive grant funds are also available.

The incentive for adopting .08 BAC laws is the best known drunk driving provision of TEA-21, but there is an additional $219.5 million available in incentive grants for states that adopt other types of drunk driving countermeasures or meet performance criteria in reducing drunk driving deaths. States that meet the requirements of either type of grant may also qualify for up to six types of supplemental funds through 2003.

Basic Grant A requires states to adopt specific DUI counter-measures.

To qualify for incentive funds under Basic Grant A, a state must implement at least five of these seven drunk driving countermeasures:

- Administrative license revocation.
- Programs to prevent minors from obtaining alcohol.
- Intensive drunk driving law enforcement.
- Graduated licensing for young drivers.
- Programs targeting high BAC drivers.
- Programs to reduce drunk driving by drivers age 21 through 34.
- Increased rate of BAC testing of drivers in fatal crashes.

Basic Grant B requires states to reduce drunk driving.

To qualify for incentive funds under Basic Grant B, a state must show a reduction in each of the last three years in the percentage of fatally injured drivers who had a BAC of .10 or greater, and have a percentage of drivers with a BAC of .10 or greater that is lower than the national average for each of the last three years.

A state that meets the requirements for either of the basic grants may also apply for supplemental grants, by implementing any of the following:

- Videotaping of drunk drivers by police.
- A self-sustaining drunk driving prevention program.
- Laws to reduce driving on a suspended license.

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- Use of passive alcohol sensing devices by police.
- A tracking system for information on drunk drivers.
- Other innovative programs to reduce drunk driving.

TEA-21 imposes penalties against states that don't enact open container laws and penalties for repeat drunk driving offenders. Failure to adopt such laws by Oct. 1, 2000, will result in a reduction of 1.5 percent of highway construction and maintenance funds in 2001 and 2002 and 3 percent in subsequent years. Each of the provisions are more complex than they seem on the surface.

States will lose highway funds for not complying with TEA-21.

Although this sanction is being referred to as open container, it also prohibits consumption of alcohol in the passenger compartment of a vehicle. To comply with TEA-21, states must enact both open container and anticonsumption laws. Forty states currently have laws prohibiting drinking alcohol in a car or truck, while only 28 states have open container statutes.

States must pass open container and anti-consumption laws.

States must enact all of these penalties for repeat offenders, which TEA-21 defines as a second or subsequent drunk driving offense:

1. Suspend the offender's driver's license for not less than one year.
2. Impound or immobilize the driver's cars or install ignition interlock devices.
3. Screen for underlying alcohol abuse problems and provide treatment.
4. Impose sentences of not less than 30 days of community service or not less than five days of imprisonment for a second offense and not less than 60 days of community service or not less than 10 days of imprisonment for third and subsequent offenses.

State legislators have a lot to do to meet the drunk driving requirements of TEA-21, and they must comply by Oct. 1, 2000, to avoid losing federal highway funds. The National Highway Traffic Safety Administration has developed a Web site to help states understand and comply with the law. The TEA-21 home page is available at http://www.fhwa.dot.gov/tea21/index.htm.

October 2000 is the compliance deadline.

Selected References

TEA-21 Web Resources:

TEA-21 home page: http://www.fhwa.dot.gov/tea21/index.htm
TEA-21 summary: http://www.fhwa.dot.gov/tea21/sumsafe.htm#ap
TEA-21 table of contents: http://www.fhwa.dot.gov/tea21/sumtoc.htm
.08 BAC incentives: http://www.fhwa.dot.gov/tea21/factsheets/n_163.htm
Basic and supplemental grants: http://www.fhwa.dot.gov/tea21/factsheets/n_410.htm.
Open container sanctions: http://www.fhwa.dot.gov/tea21/factsheets/n_154.htm.
Repeat offender sanctions: http://www.fhwa.dot.gov/tea21/factsheets/n_164.htm.

Contacts for More Information

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http://www.nhtsa.dot.gov/

LifeSafer Interlock: Product Design and Features

The SC100 incorporates all of the following design elements: Ergonomics, Simplicity, Reliability, Specificity, and Anti-circumvention.

TECHNOLOGY The SC100 was designed to meet or exceed technical guidelines for Breath Alcohol Ignition Interlock Devices published April 7, 1992 by NHTSA (National Highway Traffic Safety Administration). See the NHTSA Interlock Guidelines page.

HUM TONE Requires client to deliver a hum resonance while blowing the alcohol test, prior to starting the vehicle. Deters techniques utilized to mimic human breath or to absorb alcohol.

RANDOM OR FIXED RE-TEST The client is alerted and given a grace period to re-test after the vehicle is put into the run state. The test can be delivered while operating the vehicle. Breath test refusal or failure is recorded and sanctions are imposed, including honking of the car's horn. Deters drinking after completing a sober start, as well as letting the vehicle idle at bars.

TIMED-LOCKOUT The LifeSafer can be programmed to accept a breath test during specified times, and otherwise remain interlocked. Restricts driving hours and allows for the device to be temporarily used as an immobilization tool.

BYPASS DETECT If a breath test is not passed within a prescribed period of time after the vehicle is put into the run state, the horn will begin honking until the vehicle is turned off, or until a breath test is successfully passed. All events are recorded. Deters hot-wiring and push-starting of vehicles.

EVENTS LOG A built-in memory chip records all events associated with the use and/or misuse of the device. Reports are generated through a personal computer in summary form or in complete hard-copy format.

VIOLATIONS RESET If the pre-determined number of violations occurs during a monitoring period, an early inspection is required. Failure to report will result in immobilization of the vehicle. Violations are quickly identified and reported to the jurisdiction.

SERVICE REMINDER Reminds the client of a scheduled monitoring check. Failure to have the device monitored within the scheduled time period is a violation and results in a device lock-out.

POWER INTERRUPT A dated record of when the 12 volt power has been disconnected or interrupted. The device maintains memory through an onboard back-up lithium battery. This condition (other than Tampering) can occur when a vehicle's battery is disconnected due to repairs or is replaced. Clients are required to provide documentation of repairs.

VEHICLE RESTART In the event of a vehicle stall, the driver has a grace period during which the ignition can be turned off and re-engaged without having to submit an additional breath test.

A data log of vehicle use is printed out every 60 days, when the "Intoxalock" is calibrated. The data log records the date, time, and day of the following:

Any attempt to disconnect the device.
Any attempt to disable or fraudulently start the vehicle
Any failure to start due to excessive alcohol level.
Every start and stop, as well as the breath alcohol level of the driver.

The device features a rolling retest that occurs at random intervals while the vehicle is in operation. This prevents another individual from starting the vehicle and allowing an intoxicated person to then drive the vehicle. It also prevents a person from starting the vehicle sober and then consuming alcoholic beverages while driving.

The unit uses an alphanumeric, eight character LED display to prompt the user for instructions, and to display the exact breath alcohol level.

The software and hardware have been designed so that changes and modifications based on particular state or legislative requirements can be made quickly and easily.

The device uses breath temperature and pressure sensors to prevent illegitimate breath samples and illegal starts.

The vehicle's data log can be analyzed or printed out from a spreadsheet program. This will assist probation officers and judges in determining a user's habits and behavior.

The "Intoxalock" has been thoroughly tested under extreme temperature and altitude conditions, and found to be very reliable.

The "Intoxalock" passes all qualifications set forth by the National Highway Traffic Safety Administration (NHTSA).

The "Intoxalock" utilizes state-of-the-art technology, resulting in unparalleled reliability and accuracy.

LifeSafer Interlock: NHTSA Interlock Guidelines

Published on April 7,1992, the guidelines were intended to provide states with a comprehensive standard to ensure a base level of interlock technology that successfully addressed accuracy, operating environments, reliability, stability, and most importantly features to deter undetected circumvention of the devices.

All of the IID devices now available on the market that are certified to these guidelines record in memory events that include but are not limited to: breath test results, vehicle starts and stops, and violation conditions. The devices incorporate a "random running re-test" to deter letting the vehicle idle at bars, or to prevent sober starts by a third party. The devices must detect push-starting, and must employ a secondary means to deter the use of false breath samples from balloons and compressed air, for example.

The net effect of NHTSA guidelines are to "raise the stakes for undetected circumvention" and to see that there is no easy way to "cheat" the device "without detection" as in the past.

The device shall thwart false or filtered breath samples such as balloons, compressed air, or hair dryers. (NHTSA requires 80% effectiveness.)
The device shall require random re-testing.
The device shall record all events including results of all breath tests.
The device shall require early lock-out for failure or refusal of re-test.
The device must obtain a minimum sample of 1.5 liters of air for a deep lung sample.
The device must allow a stall protect feature not to exceed 2 minutes.
The device must detect when the car has been started without taking a test.
The device must detect and record when power is disconnected.
The device must not be effected by normal fluctuations of vehicle voltage.
The device test results must not be significantly altered by interference from radio frequency like cellular telephones.
The device results shall not be significantly diminished from repeated testing with alcohol.
The device shall demonstrate the ability to maintain calibration for 67 days.
The device shall lock-out if normal servicing, monitoring and inspection are not performed.
The device must not be effected by normal vibration found in vehicles.
The device must register alcohol readings within a range of 0.015 to 0.035 when tested with a calibration solution of 0.025 over temperature ranges from -20C to +70C.

EMERGENCY BYPASS If the Bypass is invoked, the client must return to the service location before the vehicle is immobilized. Proof of an emergency is forwarded directly to the referring agency. Service Centers may be pre-authorized to invoke the Emergency Bypass in the event of a device malfunction.

HOST INFORMATION MANAGEMENT SYSTEM LifeSafer licenses proprietary software that controls the programming of the device and guarantees integrity of the information that is extrapolated from the Events Log. Encrypted remote access to the HOST DATA BASE is created for electronic reporting.

PROGRAM COSTS Client-paid rental program averages $2.00 per day.

FOR FURTHER INFORMATION contact LifeSafer Interlock, Inc., 1136 St. Gregory Street, Suite 2-C, Cincinnati OH 45202. (800) 531-0006 (voice), (513) 651-9563 (fax). Or e-mail us at freund@lifesafer.com.

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New Hampshire
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Regional Court Administrators
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Kristin A. Dumont, Esq.

April 25, 2000

Senator Debora B. Pignatelli
Chair - Senate Judiciary Committee
Room 102 - Legislative Office Building
Concord, NH 03301

RE: *House Bill 713*

Dear Senator Pignatelli:

I write in support of House Bill 713 and apologize for my inability to appear personally on April 26, 2000. I will be in Washington, DC, attending a conference on juvenile drug court programs -- clearly, a related topic.

Jurisdiction over DWI cases is primarily in the district courts. During calendar year 1999, 5,016 DWI cases were disposed of with a finding of guilty in the district courts of New Hampshire. Of that number, 588 first offenders were between the ages of 16 and 20. This number represents a 30.4% increase between 1995 and 1999. I mention these numbers to put the issue before the Committee into perspective. This is not a small matter, either in terms of numbers or social impact. Experts tell us that the average first offender has driven while impaired at least several times before being caught. We know that of the 5,016 DWI cases disposed of in 1999, 13%, or 602, were convicted of a subsequent offense.

The courts and the Department of Safety currently have only a limited number of sanctions available to them when addressing DWI cases. These sanctions include fines and license suspensions for first offenders and jail and probation for subsequent offenders. The addition of the ignition interlock device will be a great asset to the courts as we carry out one of our most important functions, which is to protect the public safety through effective sentencing.

As each DWI defendant goes through the driver intervention program, an evaluation of their relationship to substances is completed and returned to the court where the person was convicted. I routinely read these reports and remain amazed at the number of

PO Box 380, Concord, New Hampshire 03302-0380
(603) 271-6418

people found to have addiction issues and who require some form of treatment or rehabilitation plan.

If the ignition interlock system plan is passed into law, our courts, working in conjunction with the Department of Safety, will be able to act upon the knowledge gained in the IDIP evaluation process and assure greater safety on our highways.

It is important, as well, to point out that in many cases, given the rural nature of New Hampshire, DWI defendants ask to have their licenses returned immediately at the end of the minimum mandatory period of license suspension required by statute, at least for purposes of travelling to and from work. In a significant number of cases, the courts and the Department of Safety are reluctant to grant that request for a variety of reasons, most often having to do with a justified concern that this person may drive drunk again. The ignition interlock system will allow the courts to put into place a safety check that will both assure safety and allow a defendant to continue to work and provide for that defendant's family's needs.

I would be happy to answer any questions you or any member of your committee may have and expect to return to the State on Monday, May 1, 2000.

Very truly yours,

Edwin W. Kelly

Edwin W. Kelly
Administrative Judge

EWK:dbh

CC: Members of the Senate Judiciary Committee
Representative Susan W. Almy
Assistant Commissioner John Stephen

HB 713 relative to penalties for multiple DWI offenses: introducing the alcohol ignition interlock system into NH

Honorable Senators,

Problem: Over the past decade the legislature has reduced the criterion for DWI from .10% to .08% breath alcohol, instituted administrative (immediate) license suspension, and increased the period of license revocation to three years for a second offense and five years for a third. In recent years there has been pressure to extend revocation yet further and lock third-time offenders up for a year in county jail. Informal discussions by members of the House Criminal Justice (HCJ) and Finance Committees with judges, police, troopers, and lawyers have revealed that one result of the long license revocations has been to create a situation in which it is worthwhile for most second-time offenders to hire a lawyer capable of slowing down the criminal justice system enough to force a plea bargain down to first-time status. One Impaired Driver Intervention Program manager testified to the HCJ Committee that they had a known "fourth-time first-timer" in their courses last year. Although none will admit to doing it, there is also suspicion that police are winking at drunk drivers who already have first-time convictions and need to be able to drive to earn a living. And then there is the problem of people driving with revoked/suspended licenses - no way to know how many.

Goal: **The purpose of our DWI laws should be to make the roads safer**, both by keeping drunk drivers off the roads and by giving alcoholics who drive incentives to seek out and stay in treatment. Keeping drunk drivers off the roads by locking them up permanently or providing daily probation checks (one drunk-driving victim's request) would be extremely expensive.

Solution: The **alcohol ignition interlock device** provides the same road-safety result as these two measures, and the low cost is paid for by the offender. An AIID-equipped car will only start after an alcohol-free[1] person has breathed into the device, which retests the driver at random intervals during the drive; if it detects alcohol en route it beeps the horn and flashes the lights until the driver pulls over and stops the car. The device is fixed to the car with bolts overlaid with proprietary shrink-wrap, so that at the monthly checks, it is easy to tell if the offender tried to remove it. At these checks, it informs on how often, and when, the person failed the test and didn't. An offender stopped by the police using a different car loses his license, is hauled into court and can be charged with contempt (possible fine, jail time).

If the person is drunk, he doesn't drive; and he learns to do his drinking after getting home at night. In Maryland, which did a true randomized trial of hard-core multiple offenders in 1995[2], the half sentenced to full license suspension were caught driving drunk three times as often as

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[1]Set at 1% or 2% depending on state regulations

[2]Kenneth Beck, "The Effects of Alcohol Ignition Interlock License Restrictions on Multiple Alcohol Offenders: A Randomized Trial in Maryland", in Alcohol, drugs and traffic safety: Proceedings of the 14th int'l conf. on alcohol, drugs and traffic safetty, Annecy, 21-26/09/97, ed. C. Mercier-Guyon: Annecy, 1997. pp. 177-183. Available on request.

those sentenced to the interlock. Many other less stringent studies elsewhere support this result. The private service provider that installs and monitors the device monthly, under Dept. of Safety supervision, reports test failures to probation or to the arresting agency, and the individual can be called with a warning, or summoned to court to discuss treatment or jail options. The major fault of this technology is that it is a preventive only as long as it is applied; people relapse as often after being removed from it as they do when removed from license suspension. Other states and Canadian provinces are now exploring its effect when used for first-time offenders, and/or in combination with aggressive alcoholism treatments.

Both TEA-21 and MADD now regard the device as an integral part of the DWI solution, and about 40 states have enabling legislation, but only a third had achieved working programs until recently.

Mechanisms: The key factors in creating an effective program are:

- state regulations to approve both devices (there are 8 manufacturers and more models) and service providers (there are hundreds, operating through independent car service stations, electronics stores, etc.), and state monitoring of the providers; and
- laws that will encourage judges and prosecutors to apply the device in at least 500 DWI cases per year, to create a sufficient clientele for state-wide provider outlets.

HB 713 as amended by the House sets out most of what is needed. It leaves the decision about device criteria to the Dept. of Safety, which is also charged with approving devices and with credentialing and overseeing service providers; the Asst. Commissioner of Safety has been fully involved in developing the bill. **The bill does not remove any of the existing DWI penalties**: instead it allows a judge to add the interlock for anyone coming off alcohol-related revocation or suspension, and mandates it for reckless driving and vehicular negligent homicide cases in which alcohol was involved. Its most important effect should be in reducing drunk driving by repeated "first-timers". Under the bill, the Dept. will write rules to specify the number of failed tests that will generate a report to the court and arresting agency by the service provider, and that report, or attempts to drive a non-equipped car or damage the device, will trigger license suspension and contempt of court.

Costs: The full cost of the device in other states is $50-60 for installation plus $2/day for monitoring. This cost of $60/month is dwarfed by the average $375/month spent on alcohol by low-income drunk drivers surveyed in Texas[3]. Following other states, the bill requires service providers to reserve 2% of revenues to pay for any indigent sentenced by the court. Darrel Longest of Life Sciences Corp., a major provider, stated that in their experience 2% is more than enough to meet the demand. Because they will only be reporting tampering and major patterns of failure to pass the test, the extra paperwork (and cost) to the courts and police is expected to be minor, and directly related to their core goal of improving road safety.

Requests for amendment: After consultation with the Breath Analyzer Committee and further discussion with House Criminal Justice, Department of Safety and service providers elsewhere, I

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[3]Harris County Probation Dept., Houston TX, http://www.cstinc.com/cost.html 3/15/99

would like to propose the attached amendment (not yet drafted by Legislative Services, except for the revised 82-e (III)(e)). I also attach an amendment suggested by the Assistant Commissioner of Safety after several members of the Breath Analyzer Committee requested that mandatory probation be made part of the process.

The issues covered by the full amendment are:

Title change to truly reflect the nature of the bill (earlier House omission)

Section 2: True first-time offenders cannot be sentenced to the interlock, unless they are under 21 years of age. The maximum sentence is reduced from 3 to 2 years, except that a youth will remain on the interlock until 21. Reports to arresting agency and court will only occur if probation is not given. At the request of the Chair of House Finance, clarifying language is put into III (now VI) e, to underline that the indigent fund is paid from the providers, as was intended.

Section 3: Inadvertent "may" changed to "shall" in several parts of anti-circumvention language. Violating court order language improved by Judge Kelly and agreed to by CJ Committee and DOS.

Section 4 : Mandatory interlock on reckless driving changed to optional.

Section 5: Mandatory interlock on negligent homicide changed to optional and put in proper section.

Section 6: Duties added to BAC to oversee the program.

The amendment suggested by John Stephen for the BAC to which I cannot agree, on the final page, restricts the device only to second and subsequent offenders and requires that Probation be used every time the interlock is used. This is both because it would be better for the final result (teaching the individual not to drink and drive post-interlock) and would mean that the police and state troopers would not have to receive occasional reports of failed tests/tampering, call the individual up to warn him or decide to take the matter to the court for further penalties. We are talking about a maximum of 1200 cases per year (if both subsequent offenses and youth offenders do not overlap and all of them are put on interlock), and three independent national service providers have all estimated for me that reports would be generated for about 5% of offenders per month - primarily by offenders in their first month of the interlock, who would only need a warning call. These 60 cases per month, spread out over the state's troopers and town police, would not be a burden; but if they had to go to Probation, Probation would have to do an intake interview on all of them, even the ones who never generate a failed-test report. While it seems desirable to use Probation much more often for DWI and other offenses they currently are seldom used for, in our current fiscal situation we have zero probability of doing so.

Lastly: This device will save lives. Thank you for your consideration.

Rep. Susan Almy, GR-14

States With Ignition Interlock Programs (Oct., 1998)

1. ALASKA (enabling statute, but no program yet)
2. ARIZONA (enabling statute for a small, 300 unit, pilot program)
3. ARKANSAS (enabling statute, but no statewide protocol)
4. CALIFORNIA (enabling statute for many years, but conflicts with the DMV regs cause reduced judicial involvement)
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)
7. FLORIDA (enabling statute, but no statewide use of interlocks due to lack of regs and little use by DSHMV and the courts)
8. GEORGIA (a strong interlock statute, but not enforced; small program)
9. HAWAII (enabling statute, but no statewide program yet)
10. IDAHO (enabling statute, but no statewide program yet)
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])
12. INDIANA (enabling statute, but small statewide program; good program in Hancock County through Courts)
13. IOWA (enabling statute; long running program, but not increasing in size)
14. KANSAS (enabling statute; fragmented programs in parts of state)
15. LOUISIANA (enabling statute, but used mainly in the New Orleans & Baton Rouge areas, and seldom outside of that Parish)
16. MAINE (enabling statute, but no program yet)
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])
18. MICHIGAN (enabling statute, undergoing restructuring this year; very small program)
19. MINNESOTA[1]
20. MISSOURI (enabling statute, decent programs in 3 major cities)
21. MONTANA (enabling statute, but small program from courts)
22. NEBRASKA (enabling statute, small program, not statewide)

[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)
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])
25. NORTH CAROLINA (enabling statute, through DMV, as a condition of licensure for those with alcohol problems)
26. NORTH DAKOTA (enabling statute, very small program)[2]
27. OHIO (enabling statute; older program; large in Cincinnati, but small in rest of State)
28. OKLAHOMA (enabling statute, good program in Tulsa, but not really statewide)
29. OREGON (an older, statewide program, rendered by one vendor under contract; good statewide use of interlocks)
30. RHODE ISLAND (enabling statute, but no program)
31. TENNESSEE (enabling statute, but the program exists only in several cities; legislation under consideration to expand the program)
32. TEXAS (strong statute - mandatory for second and subsequent offenders as a condition of bond; frequent judicial use as a result of conviction and probation)
33. UTAH (enabling statute, but small program)
34. 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)
35. WASHINGTON STATE (just passed a mandatory interlock for 1st, 2nd, and 3rd offenders as a condition of sentencing)
36. 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])
37. WISCONSIN (enabling statute, but struggling for some time in getting a program in effect; state supports interlocks, but small judicial use of them)

Prepared by Life Sciences Corporation
200 Girard Street, Suite 206
Gaithersburg, Maryland 20877
(301) 212-9222

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

Available Interlock Providers: email from Darrel Longest, Life Sciences Corp. 2/5/00

The attached is the most recent list of manufacturers that I have. I understand that another one, Smart Start, Inc., is trying to develop a product, but I don't think it has been tested and certified yet.

All these manufacturers have service providers (generally subcontractors in small shops) that deliver their products in most interlock-enabled states. There is clearly no monopoly here. It's like buying a laser jet printer.

...

I am a service provider -- and we have 9 statewide programs in the US. We have provided, over the years, devices from 3 different manufacturers, as they have grown in technology. I compete in every one of these states, except 2 (where we bid on the service and are the exclusive provider, after competitive bidding from 6 different providers).

There are few other service providers like us. Among the manufacturers:

1. Guardian has no service providers, as they monopolize all their state programs by franchising them. (Except one, which is owned by the CFO for Guardian, out in California, and the Oregon program.)
2. LifeSafer does theirs through a combination of programs they own, and subcontractors, but mainly through their controlled provider, named National Interlock Service, which is owned by many of their board members.
3. AutoSense and ASI work only through a distributor system of contractors, and do not even try to indicate that they control the programs centrally.
4. Draeger has a contract with our company: we provide all the service, calibration, reporting, etc. in the US that involves their equipment. Draeger also does not pretend to provide interlock service, as they are strictly an ISO-qualified manufacturer, and not in the service business.

There are many other service providers, over 100 in the US, who are "mom and pop" and about 4 who have large state programs, including National Interlock and Smart Start. We are the only one with large, multi-state programs at this time.

The issue that I was trying to address in my email was that there is clearly a strong compeitive market for interlock providers in the US, whether they come from independent service providers (like our company), or from in-house, controlled providers, like LifeSafer's.

List of Interlock Manufacturers offering products in the US

Alcohol Countermeasures Systems, Inc., 3538 Peoria Street, Suite 506, Aurora, Colorado 80010
Alcohol Sensors International, Ltd., 11 Oval Drive, Islandia, New York 11722
AutoSense International , 683 East Brokow Road, San Jose, California 95112
CST, Inc., 2165 NW 108th Street, Suite D, Des Moines, Iowa 50325
Draeger Safety, Inc., 185 Suttle Street, Suite 105, Durango, Colorado 81301
Guardian Interlock Systems, 125 Church Street, Suite 320, Marietta, Georgia 30060
LifeSafer Interlock, Inc., 512 Reading Road, Cincinnati, Ohio 45202

Breath Alcohol Ignition Interlock Manufacturers
(list in alphabetical order; all verified, some on Internet, as of 3/30/00 by Rep. Almy)

Alcohol Sensors (Sens-o-Lock)
Alcohol Sensors International
28 Brandywine Dr.
Deer Park, NY 11729
Phone: 516-586-4497; Fax: 516-342-1550

Autosense International
Autosense International Corporation
683 E. Brokaw Road
San Jose, CA 95112-1005
Telephone: (408) 453-1700 ; (800) 325-2657 ; FAX: (408) 453-5920

Consumer Safety Technology, Inc. (CST) (Intoxaloc)
Contact: Tim Moran or Kevin Doyle
Consumer Safety Technology, Inc. (CST, Inc.)
10520 Hickman Road, Suite F
Des Moines, Iowa 50325
(877) 777-5020; (515) 331-7643; (515) 331-7513 (FAX); http://www.cstinc.com

Draeger Safety, Inc..
Breathalyzer Divison
185 Suttle St., Suite 105
Durango, CO 81301
(303) 385-5555; fax (303) 385-5522; info@draeger-breathalyzer.com;
http://www.draeger-usa.com

Guardian Interlock
Joe Sheram, President, or Roy Sheram,
Vice-President
Guardian Interlock
125 Church St. Suite 320
Marietta, GA 30060
Tel.: (770) 499-0499 ; (800) 849-5465

Legislative Affairs:
Philip Bissett
453 Walnut Dr.
Edgewater MD 21037
Tel. (410) 798-0900; fax (410) 956-5695;
hon.pdbissett@erols.com

Guardian Interlock Systems Corp[1]. (was Alcohol Countermeasure Systems, Inc.)
Ian R. Marples, President
Guardian Interlock Systems Corp.
975 Midway Blvd., Unit 14
Mississauga, Ontario L5T 2C6 CANADA

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[1]This company holds the rights to sell the Guardian Interlock in Canada, and is not connected to the Georgia-based USA one. The company has proprietary software that allows one person to receive and check monthly test reports from all offenders in a province, and put out statistics - but only if the province/state will accept a monopoly, as Quebec has.

Telephone: (905) 670-2288; FAX: (905) 670-8211; irmarples@guardianinterlock.ca

Lifesafer Interlock
Richard Freund, President
LifeSafer Interlock
1136 St. Gregory St., Suite 2C
Cincinnati, Ohio 45202
(800) 531-0006 ; (513) 651-9560 ; FAX:(513) 651-9563; Freund@Lifesaver.com

Selected Interlock Service Providers
Darrel Longest, President (primarily representing Draeger)
Life Sciences Corp. (Ignition Interlock)
15200 Shady Grove Road
Rockville, MD 20850
(301) 212-9222; info@ignitioninterlock.com

Walter B. Lotz, Jr., President
Sens-O-Lock Distribution of New England, Ltd.
2009 Western Ave.
Albany, New York 12203
1(888) STOP-DUI; WaltLotz@aol.com

Interlock Systems of Iowa
11129 N.W. 54th Avenue
Grimes, IA 50111
(515) 986-4111; (800) 369-3661; Fax: (515) 986-9411

National Interlock Systems, Inc. (Michael Balgord, Pres.)
3538 Peoria St., Ste 506
Aurora CO 80010
(888) 769-6080 ; Fax (303) 366-5996

Alcohol Countermeasure Systems - Ignition Interlock Devices
Manufacturers of Breath Alcohol Testing Equipment

Ignition Interlock Devices

An ignition interlock device is an electronic alcohol analyzer which connects with the ignition and other control systems of a motor vehicle. It measures the BAC of the intended driver and prevents the vehicle from being started if the BAC exceeds a preset limit. It is generally comprised of a detachable Sample Head and a Control Module which is hard wired to the vehicle in a tamper resistant fashion.

General Characteristics of an Ignition Interlock Device

Features alcohol specific sensing and comprehensive anti-circumvention technology coupled with extensive electronic memory reporting to ensure program integrity and user compliance.

Data logging capability for more effective monitoring of a broad range of events and conditions, and a reporting format including statistical analysis of events over extended periods to enable comprehensive program review.

Sensing mechanism which is not affected by environmental or biological vapors, such as keytones, cigarette smoke or vehicle exhaust.

Capable of operating accurately in extreme climatic conditions of -45 C to +85 C, 95% RH, and at altitudes up to 2500 meters.

Functional intelligence provides hum tone monitoring, random rolling retest, bypass detection, service reminder, and violations reset to provide immediate recall in the event of non compliance with program conditions.

Ignition Interlock Program

A structured means of providing a convicted drinking driver with a restricted driving privilege following a minimum period of license revocation. The participant must meet eligibility criteria and agree to follow program guidelines which include abstinence from drinking prior to driving. Proof of installation is required, and periodic checks with reports to the licensing authority every 30 - 60 days ensure program compliance.

Call one of our offices for further assistance and information on the Ignition Interlock Device and Available Service Programs.

Last update: 30 January 1997 Alcohol Countermeasure Systems 1996
e-mail to: mailbox@acs-corp.com Fax 1-905 670 8211

Alcohol Countermeasure Systems - Company Profile
Manufacturers of Breath Alcohol Testing Equipment

Alcohol Countermeasure Systems (ACS) is a leading manufacturer of alcohol sensing and breath test instruments. Formed twenty years ago, to address the emerging North American market for portable breath analysis devices, ACS has continued to actively engage in the research and development of breath analysis techniques and to introduce leading designs of breath analysis products to suit a variety of applications.

ACS is recognized for its expertise in the field of breath analysis and alcohol sensing technologies and in the innovative design of "intelligent" products based on the use of micro-computer "chips". These are noted in the law enforcement, industrial safety, clinical, public and personal markets.

Specialized products for OEM application in electronic monitoring (home arrest) and ignition interlock systems have characterized ACS as a leader in these fields.

The primary technology and manufacturing center is located in Mississauga, Ontario near the Toronto (Pearson) International Airport. This office is also responsible for all international sales and marketing efforts. ACS has international offices located in Denver, Sydney, Hong Kong, and Stockholm. In addition, an extensive dealer network exists throughout most countries of the world.

ACS export marketing mandate is to establish agents in distinct geographic areas to promote and sell breath analysis equipment in the local market. Further, ACS is prepared to enter into a license agreement for the transfer of technology and know-how necessary to establish a domestic breath analysis industry.

All enquiries may be directed to any one of our international offices.

Last update: 31 March 1997

COST TO THE USERS AND THE COMMUNITY.

Some authorities perceive the cost of an interlock device to be expensive for potential users. The information below indicates the opposite to be true, and should be helpful to a judge or attorney evaluating the potential benefits of interlock use for certain individuals.

Research summarizes that in addition to being deterred from drinking and driving, the experience of having an alcohol ignition interlock device installed results in a significant reduction in many participants' overall alcohol consumption.

This would suggest that a modest reduction in alcohol consumption makes the approximate $2.00 per day cost of the device affordable to the participant.

Recently, the Harris County Probation Department, Houston, TX, released the results of 2,500 Substance Abuse/Life Circumstance Evaluation (SALCE) tests.

SALCE is a computerized alcohol assessment program and voluntary survey on alcohol consumption patterns.

The Results of 2,500 SALCE Tests

Average Monthly Income	$1,331.00
Average Monthly Expenditure for Alcohol	$ 375.00

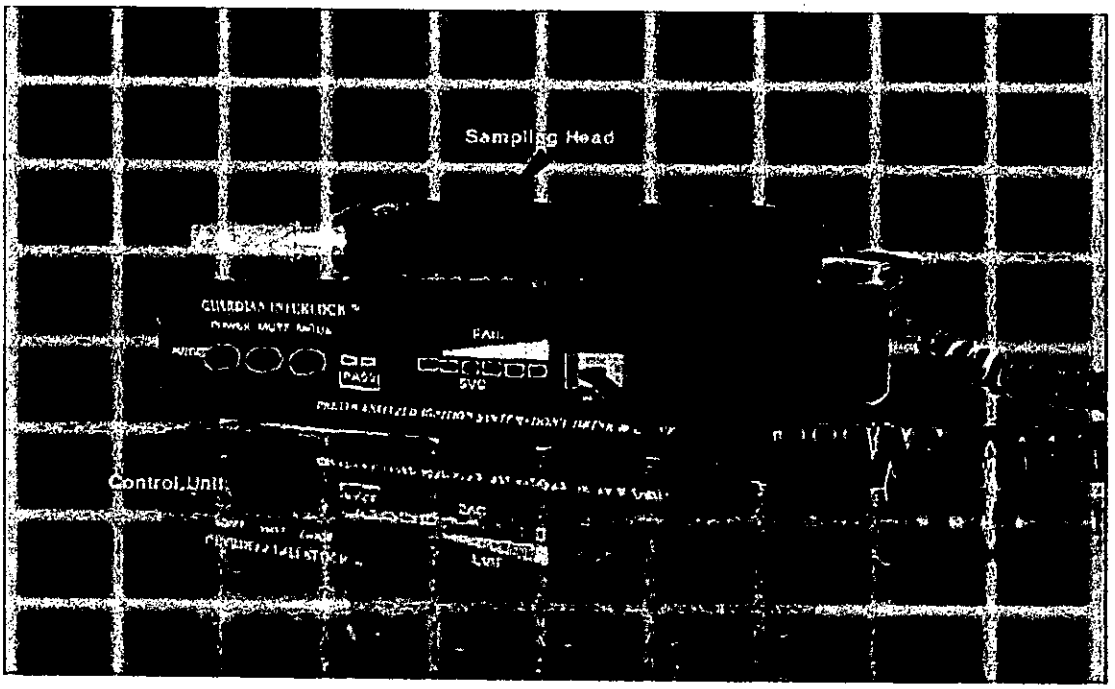
The Results of 2,500 Voluntary Surveys:

Average Attorney Fee	$590.00
Average Bond Fee	$301.00
Average Fine	$380.00
Average Salary Loss	$474.00
Average Car Damage	$1848.00
Average Insurance Premium Increase/Year	$829.00

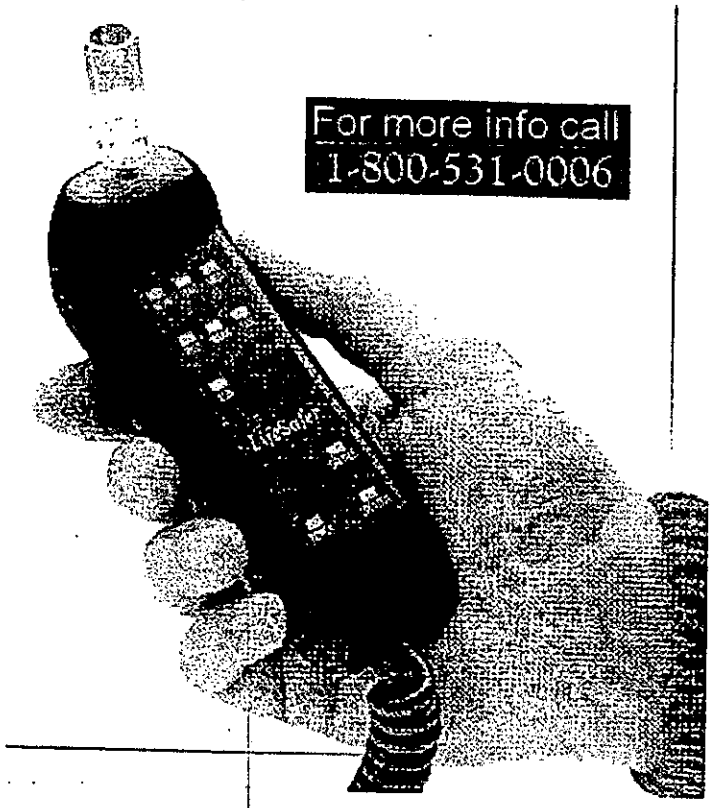
DWI offenders, on average, spend 28% of their income on alcohol consumption at an average rate of $12.50 per day. A 15% reduction in their daily alcohol consumption, or the equivalent of two alcoholic drinks, will finance their interlock device.

An interlock device will greatly reduce the incidence of a return to court for a subsequent DWI offense or driving while under license suspension. This fact could result in additional expense saved in the future.

Consumer Safety Technology, Inc. leases the "Intoxalock" for approximately $2.00 per day. The installation fee is based on customer service center preference.



Guardian Interlock model 4.4e



- **Technology**
-
-

Guardian Interlock™ Systems
Ignition Interlock Systems

Guardian Interlock Systems
453 Walnut Dr.
Edgewater, MD 21037

(410) 798-0900
fax (410) 956-5695
Mobile (410) 533-0642
E-mail: hon.pdbissett@erols.com

New Hampshire
House Bill 713
Criminal Justice and Public Safety Committee
Comments by The Honorable Phillip D. Bissett
Director of Legislative Affairs
Guardian Interlock Systems

Position: Support as Amended

As a former Maryland state legislator, I drafted the Maryland legislation and also helped in writing the Maryland regulations. Now as an industry representative, I bring many different perspectives to the debate about ignition interlocks, i.e., technological advancements, program effectiveness, etc. I have assisted numerous states in drafting their interlock statutes and regulations and have provided comments and suggestions to others. I have demonstrated the Guardian Ignition Interlock System to judges, state's attorneys, prosecutors, defense attorneys, and Motor Vehicle Administration officials.

The facts are in: Ignition Interlocks work!

A number of studies conducted on the effectiveness of the Interlock System in reducing drunk driving recidivism indicate overwhelmingly positive results when the systems are in use. A 1997 study funded by the Insurance Institute for Highway Safety (IIHS) and conducted by the University of Maryland claimed a 65 percent reduction in recidivism during the first year following sentencing.

Approximately 40 states have Ignition Interlock programs in one form or another -- judicial or administrative. Some of these states have very effective programs in place. Others are in the process of modernizing or updating their programs. It has been my experience that when states are determining which approach they feel would work best for them they should keep one thing first and foremost on their minds -- public safety.

States statutes and regulations should be implemented to withstand the test of time by allowing the states flexibility to keep up with technology. New Hampshire should have the ability to explore any and all options available to enhance highway safety and to keep its roadways free of drunk drivers.

The debate no longer centers around the fact of whether or not Ignition Interlocks work, but is now more focused on how a state implements, monitors, and enforces its Interlock program. Experience has shown that states that are committed to having an effective Interlock program are states that have one agency administering the program. An example would be the Department of Motor Vehicles, based on their experience in dealing with driver's licenses.

House Bill 713, as amended, addresses a serious problem, drunk driving. The bill allows the installation of an approved Ignition Interlock device for first-time offenders (remember this is first time caught driving drunk) for a period of not less than six months or more than one year. For subsequent offenses it allows the installation of an approved Ignition Interlock for up to three years.

Guardian Interlock's experience from around the country (we have devices in 27 states) tells us that with sanctions like this in place, coupled with an effective program, New Hampshire will realize a significant reduction in drunk driving incidents. Not only will an Ignition Interlock program reduce the human cost involved in DUI accidents, but also it will help reduce the billions of dollars spent each year in health care costs and criminal costs. In 1993, medical costs associated with alcohol-related crashes was estimated at $7 billion (MADD) and over 1/4 of those costs are paid by tax dollars (NHTSA, Feb. 1993).

New Hampshire is fiscally responsible and having a program in place such as the Ignition Interlock, that requires the offender to pay their own costs ($2 per day) and not the taxpayer, is consistent with that philosophy. Think of how many new schools could be built, along with basic supplies like books, pencils, and paper that could be purchased for New Hampshire's students from these savings.

Guardian Interlock Systems, the largest, most experienced manufacturer and service provider of Ignition Interlock devices and programs in the country, applauds New Hampshire for its efforts and urges you to vote favorable on HB713, as amended.

Guardian Interlock Systems

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System Features

Service Calendar Reminds the interlock user of a monitoring appointment. If the interlock user still does not return to the center by the due date, the vehicle is rendered inoperative.

Data Logger Keeps a record of the users activity recording date, time, and BAC level of each breath test and whether or not it was passed or failed.

Random Rolling Retest This feature requires a retest after the initial breath test at random intervals, ensuring driver sobriety after the vehicle has been started.

Circumvention Alarm If the unit detects a system by-pass, it will sound the horn repeatedly until the car is turned off and the memo minder is reset allowing the user 3 days to return to the service center for an early inspection.

Program Features

The Guardian Interlock Responsible Driver Program is directed through a national network of franchise and company owned service centers who:

- Install the Guardian Interlock system.
- Administer training on the use of the system and program requirements.
- Physically and electronically inspect the system at regular service intervals
- Provide court system with hard copy compliance reports
- provide a 24-hour toll-free after hours service line.

Question & Answer

What is the Guardian Interlock system? The Guardian Interlock system is an alcohol detection device that is connected to your vehicle's ignition system. Each time you start your car you must first blow into the handset so that it can test for alcohol on your breath. If you pass the test, you can start the car. If you do not pass the test your car will not start.

What is the Guardian Interlock Responsible Driver Program? The Guardian Interlock Responsible Driver Program can help you become a more responsible driver and keeps the court informed of your progress. Usually, participating in the program is a condition of your probation or a requirement to get your license back. To enroll in the program you must usually follow these steps:

- You are notified by either the court or the state that you are required to have an interlock installed on your vehicle.
- Next, you call the Guardian Interlock Service Center nearest you to make an appointment. Installation can be done at a time convenient to you during our business hours.
- At the time of installation, a Guardian Interlock service technician teaches you how to use the system properly.
- Finally, you are required to report to the Guardian Interlock Service Center at specific times so that the unit can be inspected and your progress reported to the court or the state.

Is the Guardian Interlock difficult to use? Learning to use the Guardian Interlock is not difficult. At your installation appointment you will be fully trained by the service technician and will have the opportunity to practice on a demonstrator unit and your own unit. After a few days, using the system will become second nature, no more inconvenient than buckling your seat belt.

What if someone else wants to drive my car? Any family member who uses your car should come with you when the system is first installed. They will be instructed on the use of the interlock. If it is more convenient, family members can make an appointment for training at a later date.

Will the Guardian Interlock system work in my car? The system is designed to work in all cars and trucks. As an additional service, your vehicle's electrical system is tested to ensure that it works properly. In the event that the electrical system needs repair, work must be completed before the system can be installed.

Can it affect my car? No. The Guardian Interlock system is designed to interfere with your vehicle's operation as little as possible. Your vehicle will be returned to "normal" at the time the system is removed.

Can I cheat the system? Not without being caught. Your system keeps a record of every transaction you have with your interlock along with the date, time and alcohol level. It can also be set to require a random retest after you start you car. If this retest is failed or refused or If the unit detects that the car is running and no breath test has been given it resets is internal calendar, requiring you to return to the service center early. This activity is then reported to the authorities and a reset fee is charged by the service center.

What is the rolling retest and will it shut off my car? The rolling retest is a device used to ensure that the driver of the car is not drinking and driving. It requires a random test as you drive down the road (after the initial test is passed and the car is started). **The interlock cannot shut off your car.** If this test is failed or refused it will cause your lights to flash and your horn to honk until you pull over and turn the car off. The interlock then resets its internal calendar requiring you to report back the service center early.

Is the Interlock alcohol specific? In order to offer you the lowest cost unit in the country we have chosen not to make the Guardian Interlock alcohol specific. Your service technician will cover the do's and don'ts of the system that will make it hassle free.

How long does the program last and how much does it cost? The court or state determines how long you must be in the program, however the minimum lease period is 6 months. The program cost less that $2.00 per day. This charge covers the lease and all scheduled appointments.

Do you offer financing? Most Guardian Interlock Service Centers accept Master card and Visa. Prepaying your lease on your bank card could lower your payments to as little as $10-$20 per month.

Will my car start if I have been drinking? When your system is installed, the service technician will explain to you the alcohol settings for your assigned system and the different conditions that can cause you to fail the breath test.

What if I cannot get my car started? First review your operating guide that you will receive at the time of installation. If that does not clear up the problem, call you local service center.

What are the benefits of participating in the Guardian Interlock Responsible Driver Program? Most participants in the program are on probation for one or more drinking and driving offenses. Offenders who want to help monitor themselves and who agree to participate in the Guardian Interlock Responsible Driver Program are permitted privileges that the court may not otherwise be inclined to grant. Officials are responding very positively to offenders who choose to participate in this program. They recognize that the Guardian Interlock Responsible Driver Program can help you to drive responsibly. It may even keep you from repeating your offense.

The Guardian Interlock Responsible Driver Program is an economical solution for retaining your driving privileges.

Remember,

when you choose to participate in the Guardian Interlock Responsible Driver Program, you are given the opportunity to retain a privilege and to make wiser decisions about driving.

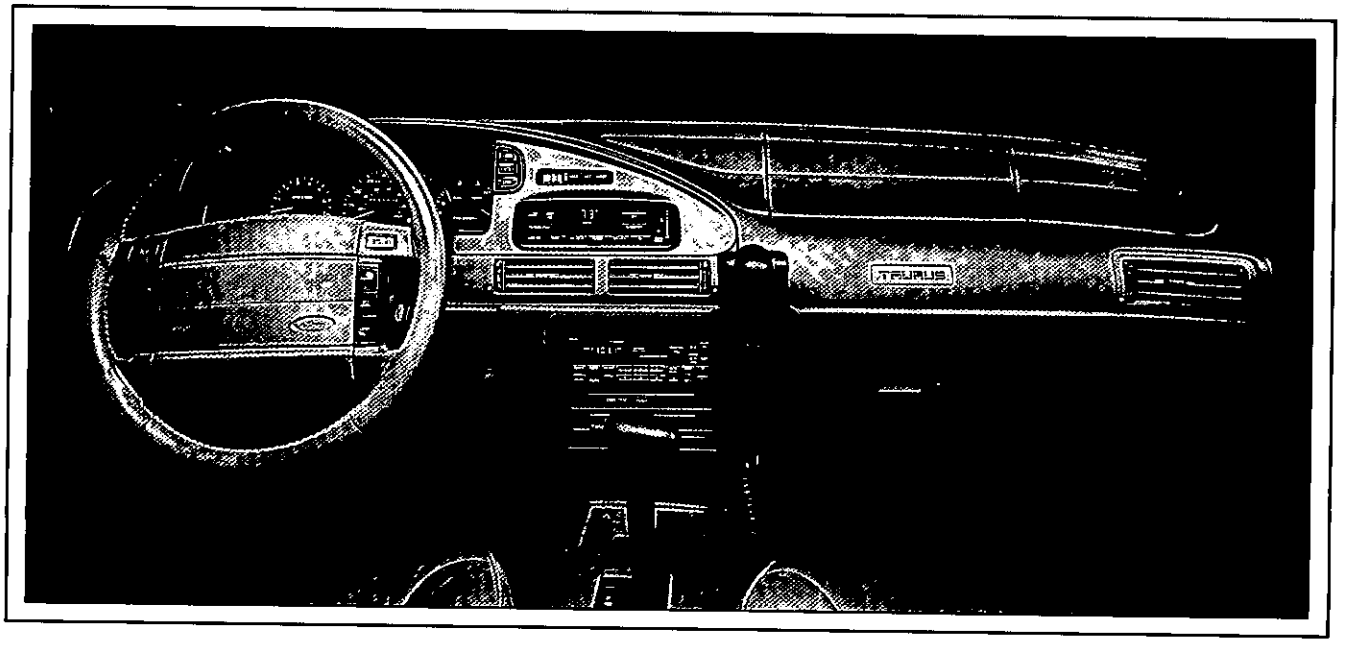
Technology for life Dräger

A NEW ERA IN BREATH ALCOHOL ANALYSIS

The Draeger Interlock® prevents the alcohol-impaired operator from starting a vehicle or machinery.

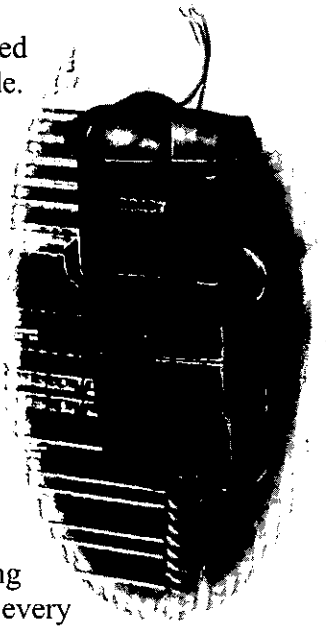
- Patented advanced anti-circumvention features
- Alcohol-specific Draeger fuel cell
- Rugged high-tech design with Draeger precision
- Data retrieval and management
- Long intervals between calibration
- Non-sensitive to changes in altitude and temperature
- Verified NHTSA-compliance by an ISO 9000 laboratory

DRAEGER INTERLOCK®



Draeger Interlock®

The NHTSA-compliant Draeger Interlock® with its microprocessor-controlled operation is a highly reliable instrument, developed for in-vehicle use where it is desirable to prevent an alcohol impaired person from operating a motor vehicle, heavy equipment, or machinery. The Draeger Interlock prevents the engine from starting if the driver or operator provides a breath sample with an alcohol concentration above a preset limit.



Instruments in the interlock market traditionally employ a solid state sensor with limited accuracy and great susceptibility to other organic vapors like acetone or carbon monoxide. The Draeger Interlock® incorporates leading edge technology into its instrumentation and utilizes the Draeger-developed and patented electrochemical fuel cell sampling system. The heated fuel cell provides an extremely reliable and accurate measurement, is alcohol specific, is sensitive to low concentrations of alcohol in a breath sample, and provides calibration stability.

The Draeger Interlock® system is activated by turning the vehicle's ignition key to the on position. The Interlock prompts the user to provide a breath sample with a precise blow pattern. Correct presentation is indicated by a fast beeping tone. The interlock analyzes a breath sample after the subject has delivered a minimum sample volume; insufficient samples are not evaluated. All passageways through which the breath sample travels are heated and temperature controlled to prevent inaccurate readings.

The Draeger Interlock® is reliable in all climates and at high altitudes. Its wide operating range for both temperature and relative humidity make the Draeger Interlock® ideal for every application. The easy-to-read alpha numeric display and automatic operation help the operator to comply with the requests to provide a breath sample before and during vehicle operation.

The Draeger Interlock® was designed to meet the needs of service provider organizations whose goal it is to operate successful interlock programs. It is easy to program state-specific requirements in the Interlock via a user-friendly, menu-driven PC to Interlock interface. All events are recorded in the Events Log, along with the surrounding details of each event. The Interlock's complex data retention capability and uploading features simplify data management and information analysis.

Technical Data		
Operation	Temperature Humidity Atmospheric Pressure	-20°C to 70°C (-4°F to 158°F) 10 to 99% RH (non condensing) 600 to 1300 hPa
Display Measuring Range Accuracy Warm-up time @ 68°F Operating Voltage Dimensions (handset) Weight (handset)		8-character red LED Corresponding to 0.000 to 0.500% BAC Exceeds NHTSA specifications Approximately 30 seconds 8 V - 16 V 7.5" x 2.75" x 2" Approximately .75lb

Draeger Safety, Inc.
Breathalyzer Division
185 Suttle Street, Suite 105
Durango, CO 81301-7911

Tel: (970) 385-5555 • Fax: (970) 385-5522 • E-Mail: draeger@rmii.com

Committee Report

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE

Date: **MAY 11, 2000**

THE COMMITTEE ON **Judiciary**

to which was referred **House Bill 713-FN**

AN ACT ***relative to penalties for multiple DWI offenses.***

VOTE: **3 / 1**

AMENDMENT: **# 00-4392s**

Having considered the same, report the same with the following amendment and recommend that the bill: **AS AMENDED OUGHT TO PASS.**

Senator Mary Brown
For the Committee

|HB713 Docket

Bill Title: (2nd New Title) relative to ignition interlock systems for certain DWI offenders and increasing the penalty for reckless driving.

Date	Body	Description
2/16/1999	**H**	Introduced and ref to Crim Just & PSfty; HJ25, p469
2/24/1999	**H**	Copy to Chairman on 2/24/1999 due on
3/4/1999	**H**	Hearing Mar 16 10:00 Rm204,LOB
3/16/1999	**H**	Maj Report RE-REF for Mar 25 (vote 15-0;CC)
3/25/1999	**H**	Re-Referred to Crim Just & PSfty committee; HJ33, p675
7/20/1999	**H**	Re-Ref Subcom work session Aug 25 10:00 Rm204,LOB
8/5/1999	**H**	(Re-Ref Subcom: Reps Christie, Andrews, Callaghan, Hansen, Knowles, Rodd & Weare)
8/25/1999	**H**	Re-Ref Subcom work sessions Sep 8 & 29 & Oct 13 & 20 10:00 RM204,LOB
11/1/1999	**H**	RE-REF Maj Report OTP/AM for 1/5/2000 (vote 17-0;Reg)
11/1/1999	**H**	Prop Comm Am{2184}; HC93,p2287-2289
1/5/2000	**H**	Comm Am, AA VV; Recomitted to Crim Just & PSfty, Rep Christie MA VV; HJ5, p132-134
2/3/2000	**H**	Crim Just Maj Report OTP/AM for Feb 10 (vote 14-0;CC)
2/3/2000	**H**	Crim Just Prop Comm Am{3248}; HC13, p339-341
2/10/2000	**H**	Passed with Am; HJ16, p399-401 + 426
2/17/2000	**S**	Introduced and Ref. to Judiciary; SJ 4, [See Perm. Journal]
3/22/2000	**S**	Hearing March 29, Room 103, SH, 11:00 a.m., SC18, Pg.24
4/19/2000	**S**	Hearing April 26, Room 103, SH, 10:00 a.m.; SC24
5/10/2000	**S**	Committee Report Ought to Pass with Amendment{4392}[New Title], 05,11/2000, SC28, Pg.25-27
5/11/2000	**S**	Committee Report Ought to Pass with Amendment {4392} {New Title}, AA, VV; OT3rdg, MA, VV
5/17/2000	**S**	SJ 14, Pg.377-380
5/17/2000	**H**	House Nonc with Sen Am, req Conf Comm, Rep Welch MA VV; HJ45, p1365
5/17/2000	**H**	(Spkr appts Reps: Christie, Tholl, Sargent & Rodd)
5/18/2000	**S**	Sen. Pignatelli Accede to House Request fo C of C, MA, VV; SJ 15, Pg.514
5/18/2000	**S**	Senate Conferees; Sen. Brown, Trombly, Squires
5/23/2000	**H**	Conf Comm meeting May 25 9:30 RM204,LOB
5/26/2000	**S**	Conf. Comm Report [Senate Am & New Am {4694} Filed ;
5/31/2000	**H**	Conf Comm Report Adopted by nec 2/3; HJ48, p1537
5/31/2000	**S**	Conf. Comm Report Adopted, VV ; SJ 16, Pg.547-548
5/31/2000	**S**	Enrolled Bill Amendment{4791}, Adopted; SJ 16, Pg.614-615
5/31/2000	**H**	Enrolled Am{4791}(New Title), Adopted; HJ48, p1550
5/31/2000	**S**	Enrolled Bill, Adopted; SJ 16, Pg.623

5/31/2000	**H**	Enrolled; HJ50, p1567
6/21/2000	**H**	Governor signed on 06/21/2000 Eff:01/01/2002 * Chap: 0287 Sect 2 eff:01/01/2004

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Docket Abbreviations