

The Use of Interlock and Similar Devices in Criminal Cases

Warren Diepraam

National Association of Prosecutor Coordinators

and

Chief Vehicular Crimes Prosecutor in Harris
County, Texas

Ignition Interlock



Use of Device



Fuel Cell Technology



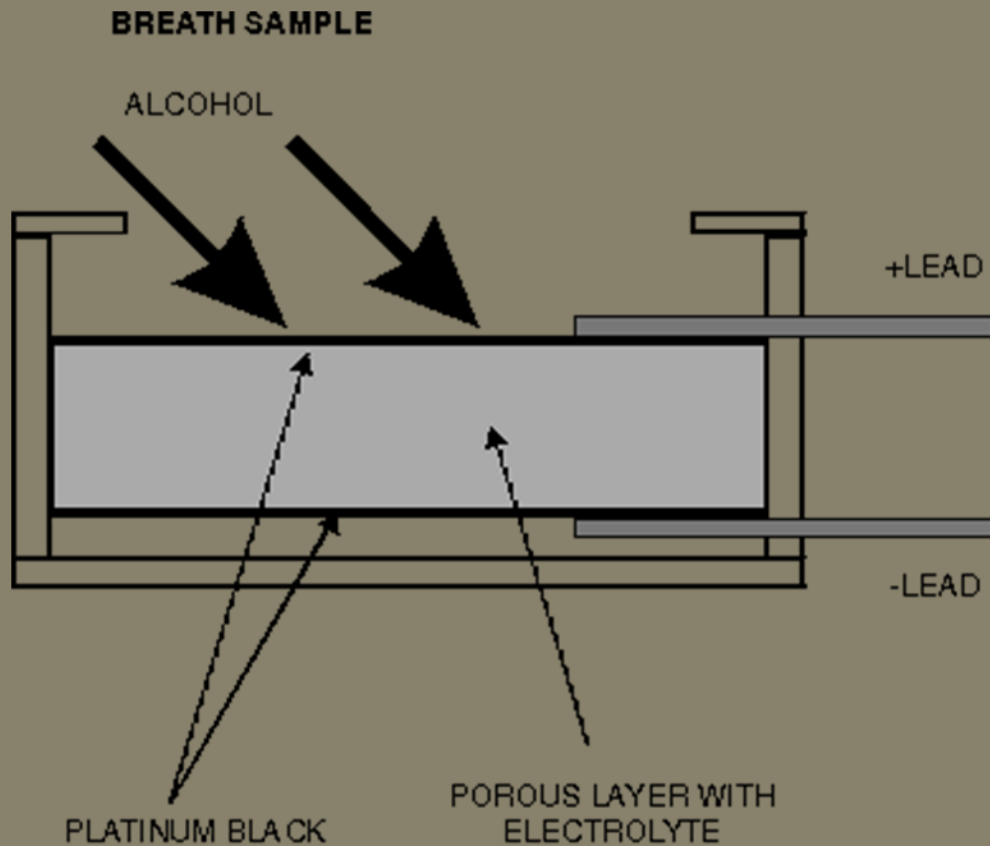
FC6

Secure Continuous Remote Alcohol Monitor



“It’s the most annoying thing,” she told Tuesday night at Tao Nightclub in Las Vegas. “When they told me I was getting it on, I thought it was going to be like a beeper, but it’s like a pair of Bose headphones.”

Fuel Cell Science



National Trends

- ◆ Only six states require interlocks on all DWI type cases: WA, AZ, IL, LA, NE, and NM.
- ◆ CA, CO, and HI are considering such bills.
- ◆ Texas leads the nation in large state DWI fatalities
- ◆ DWI fatalities have remained constant at about 32% of all traffic fatalities

Purpose of Community Supervision: 42.12 Sec. 1

- ◆ ...to place wholly within the state courts the responsibility for determining... in consonance with the powers assigned to the judicial branch....
- ◆ ... to remove from existing statutes the limitations... that have acted as barriers to effective systems of community supervision in the public interest.

Interlock Laws

- ◆ Code of Criminal Procedure (CCP) 17.441
- ◆ CCP 42.12 Sec 13(i)
- ◆ CCP 42.12 Sec. 13(n)
- ◆ Texas Transportation Code (TTC) 521.246

Code of Criminal Procedure (CCP)17.441

- ◆ As a condition of bond
- ◆ Shall require an interlock device for all charged with subsequent offense under 49.04-49.06
- ◆ Shall require for all those charged under 49.07-49.08

Code of Criminal Procedure (CCP)17.441

- ◆ May not require device if a finding is made that the device would not be in the best interest of justice
- ◆ Defendant shall be required to pay for the device and submit proof to the court within 30 days of release on bond

CCP 42.12 Sec 13(i)

Mandatory Probation Term

- ◆ DWI 1st if defendant tests more than 0.15
- ◆ DWI 2nd
- ◆ DWI 3rd
- ◆ Intoxication Assault 2nd or more
- ◆ Intoxication Manslaughter 2nd or more

CCP 42.12 Sec 13 (n)(2)

Mandatory Probation Term

- ◆ DWI 1st if the offender is under 21 years old
- ◆ Intoxication Assault if the offender is under 21 years old
- ◆ Intoxication Manslaughter if the offender is under 21 years of age

Texas Transportation Code (TTC) 521.246

- ◆ Governs occupational licenses
- ◆ Employer's vehicles exempted
- ◆ Ten year "statute of limitations"
- ◆ Similar to restrictions found in the CCP
 - ◆ Two or more convictions for 49.04, 49.07, and 49.08
 - ◆ Interlock must remain on the vehicle for at least half of the supervision period

Interlock Case

- ◆ *Chauncey v. State*, 877 S.W. 2d 305 (Tex. Crim. App. 1994)
- ◆ Opens the way for other devices (SCRAM)
- ◆ The Court held that the probationary conditions in section 13 are not exhaustive

Brock v. State No. 2-06-452-CR

Facts:

- ◆ Speeding and went airborne thereby hitting a tree
- ◆ Defendant taken to a hospital
- ◆ Half empty bottle of wine in car
- ◆ Hospital blood draw: 0.327
- ◆ Left the hospital without checking out
- ◆ As felony DWI condition, defendant was ordered to install/maintain an ignition interlock and consume no alcoholic beverages

Brock v. State No. 2-06-452-CR

Facts:

- ◆ State noticed defense that it intended to offer evidence at punishment of violations of bond conditions
- ◆ Defense filed a motion to exclude because the evidence was not scientifically reliable and evidence was not reliable enough to show that defendant used alcohol

Brock v. State No. 2-06-452-CR

Unpublished Holding:

- ◆ A court need not conduct a 705 Hearing in every case, only if at the “dawn of judicial consideration of a particular type of forensic evidence must a court hold a full blown “gate-keeping” hearing under *Kelly*.
- ◆ Courts are not required to “re-invent the wheel” if some court somewhere has conducted a full hearing.
- ◆ In this situation, courts only need satisfy the third prong of the *Kelly* hearing.
- ◆ Failure to do so in this case was harmless error.

*Kaylor v. State, 9 S.W. 3d 205
(Tex. App. –San Antonio 1999)*

- ◆ Probation revoked based upon positive readings from an interlock device.
- ◆ State's witnesses were the probation officer and the interlock company's administrator.
- ◆ Defense did not object to the introduction of the evidence under *Kelly*.
- ◆ Trial judge could reasonably conclude that the high readings came from the defendant after consuming alcohol and attempting to drive.

Secure Continuous Remote Alcohol Monitor (SCRAM)

- ◆ Technology is from the 1930s
- ◆ Recent studies show a correlation between BAC and SCRAM alcohol levels
- ◆ Uses fuel cell technology
- ◆ Probably best for determining the presence of alcohol and not the quantity of alcohol (until more studies are done)

SCRAM Case

- ◆ Maxey v. State, 2006 WL 3746737, Tex. App.-Eastland, 2006
- ◆ Appellant's flight while secured with a secure continuous remote alcohol monitor is an "escape" under the Texas Rules of Appellate Procedure

Difficult for Police to Detect

- ◆ No laws covering notification to police
- ◆ No requirement that subject inform police
- ◆ No driver's license requirement
- ◆ Driving different motor vehicle almost impossible to discover

A Needed Remedy?



Pennsylvania
www.state.pa.us

LIMITED LICENSE

5893

ORGAN DONOR

JANE Q PUBLIC
123 MAIN STREET
ANYWHERE PA 17102

No: 99 900 115 Dups: 00
DOB: 01/14/1945 Sex: F
Class: CM Eyes: GRN
Endorse: Height: 5'06"
Com/Med Rate:
Issued: 04/10/2001
Expires: 01/15/2005

Jane Public

Ignition Interlock

AMERICAN



Delaware
www.delaware.gov

The First State

LICENSE NUMBER
1359291

ADMINISTRATIVE
ROE TEST FOR IID:
103 TEST AVE
MAGNOLIA, DE 19882-0000

BIRTHDATE	SEX	HGT	WGT	PIES
09/15/1957	F	5-01	130	DWO

ISSUED: 04/03/2001 EXPIRES: 05/15/2006
RESTRICTIONS: NONE ENDORSEMENTS: NONE

Organ Donor

Michael D. Slat
DIRECTOR

AMERICAN

Prosecutor Concerns

- ◆ Extraneous bad acts for punishment
- ◆ Rebuttal of probation arguments
- ◆ Can interferent arguments be addressed?
 - ◆ YES: SCRAM graph or II multiple violations
 - ◆ Beware of older technology
- ◆ Caution: there should be some method to tie the defendant to the violations
 - ◆ Admissions and mini cameras
- ◆ Failure to receive notice from PTS or the monitoring agency
- ◆ Use in other crimes?????