

State of Texas Ignition Interlock Laws: A Policy Evaluation

FINAL REPORT

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Introduction

According to the National Highway Traffic Safety Administration (NHTSA), ignition interlock devices (IIDs), specifically designed to detect breath alcohol and prevent the use of a motor vehicle while under the influence of alcohol, have been found to be an effective tool in reducing recidivism among driving while intoxicated (DWI) offenders (Goodwin et. al, 2015).

Currently, all 50 states have laws that require the installation of an IID for impaired driving offenders. Though all states have some type of law that require all or some convicted impaired driving offenders to install an IID, 37 states have made IIDs mandatory or highly incentivized for all convicted impaired drivers, which requires IIDs to be installed, even for the first-time offenders (Dong et al., 2016).

However, according to NHTSA's model guidelines, all states are encouraged to adopt IID provisions for first offenders and establish a minimum length of IID installation (NHTSA, 2013).

To reduce DWI driving on Texas roadways, legislative statutes have been passed that mandate DWI offenders install an IID as a condition of bond and/or probation if he or she meets certain criteria. Currently, Texas law requires an IID be ordered as a condition of bond for all second and subsequent offenders as well as offenders charged with Intoxication Assault or Intoxication Manslaughter (CCP 17.441). In addition, Texas law mandates an IID be installed as a condition of probation for: all second and subsequent offenders, first offenders with a blood alcohol concentration (BAC) of .15 or higher, and first offenders under the age of 21 (CCP 42A.408).

Each biennium, when the Texas legislature meets, stakeholders work to strengthen Texas' ignition interlock policies. While each group is interested in reducing alcohol impaired driving on Texas' roadways, the ways in which this is achieved may conflict. To better understand potential ways in which Texas' ignition interlock statutes may be changed, it is critical to examine the current statutes for strengths, weaknesses, and opportunities for improvement.

To evaluate Texas' ignition interlock statutes, investigators for this project conducted a multifaceted evaluation of ignition interlock statutes. Investigators performed a literature scan for background information, compared Texas' ignition interlock statutes to three states with the strongest ignition interlock statutes and conducted a series of focus groups to discuss the strengths and weaknesses Texas's ignition interlock statutes with stakeholders.

Methods

To conduct the analysis for this project, the research team first began by compiling and reviewing all of Texas' ignition interlock statutes. The review of Texas' statutes provided the foundation for further analysis and review.

Beyond reviewing Texas' statutes, this project sought to review the ignition interlock statutes of three other states and compare the IID program of those states to Texas' program. To select the states, the project team began with the National Highway Traffic Safety Administration's Evaluation of State Ignition Interlock Programs: Interlock Use Analyses from 28 States, 2006 – 2011 (Casanova-Powell et. al, 2015). This report evaluated the quality of the ignition interlock program in 28 states by rating each program on eight categories (Casanova-Powell et. al, 2015). For this evaluation, the research team took

the average score of all eight categories to rank order the states with the strongest IID programs. Based on this evaluation, the three states with the strongest IID programs were:

- Colorado.
- New Mexico.
- Washington.

Once the three comparison states were identified, the research team compiled and reviewed the ignition interlock statutes for the comparison states. During this review, the research team looked for similarities and differences in the laws compared to Texas' statutes. In addition, the research team looked at the laws for their strengths as well as opportunities for adoption by Texas.

Finally, the research team conducted a series of four focus groups to discuss the strengths and weaknesses Texas's ignition interlock statutes. These focus groups provided a first-hand look at the challenges the current framework of statutes creates in dealing with DWI offenders. The research team conducted one hour long focus group each with prosecutors, members of the judiciary, probation officers, and ignition interlock manufacturers. To recruit the most appropriate participants, who could share valuable insights and lessons learned, the research team worked with Clay Abbott of the Texas District and County Attorney's Association to identify prosecutors, Judge David Hodges of the Texas A&M Transportation Institute (TTI) to identify members of the judiciary, Dottie McDonald of SmartStart to identify probation officers, and Troy Walden of TTI to identify representatives of ignition interlock manufacturers. Through these representatives, the research team identified: 15 prosecutors, 9 judges, 29 probation officers, and 13 representatives of ignition interlock manufacturers to attend the four focus groups. In all, 15 prosecutors, 4 judges, 5 probation officers, and 5 representatives of ignition interlock manufacturers participated in the focus groups.

Texas' Ignition Interlock Laws

Texas' ignition interlock laws can be found in three different locations, the Penal Code, Code of Criminal Procedure as well as the Transportation Code. Though the statutes are found in the same location, they all work together to form a comprehensive IID program. Appendix A contains the full statutory language of Texas' ignition interlock statutes.

In Texas, DWI offenders must install an IID as a condition of bond and/or probation if he or she meets certain criteria. Currently, Texas law requires an IID be ordered as a condition of bond for all second and subsequent offenders. In addition, Texas law mandates an IID be installed as a condition of probation for: all second and subsequent offenders, first offenders with a blood alcohol concentration (BAC) of .15 or higher, and first offenders under the age of 21.

If the IID is ordered as a condition of bond, the IID will likely remain installed until the case is disposed of. However, an offender could approach the court to have the device removed prior to disposition. If the IID is ordered as a condition of probation, under the law, the device is to remain installed for at least half of the supervision period. Some jurisdictions will require the offender to keep the device installed longer, however, it is up to the discretion of the court. Typically, an offender will be allowed to remove the device after the IID requirement is met, regardless of violations registered as Texas does not currently utilize compliance-based removal. If an offender does not receive a sentence of probation as disposition in their case, there is no IID requirement.

In 2015, to reduce the number of offenders driving with a suspended license and without an IID, Texas passed a law allowing an offender to receive an unrestricted occupational drivers license if they show proof of IID installation. Offenders may receive this type of license post-conviction when their license has been suspended because of a DWI conviction.

For an offender to be placed on an IID, it must come as an order from the court. Each jurisdiction in Texas operates independently in their policies and procedures related to ordering and supervising IIDs. In many cases, the supervision and monitoring an offender will receive depends on if the IID is being ordered as a condition of bond or probation and the size of the county. There is no central agency who monitors all offenders with an IID in the state.

However, the ignition interlock industry in Texas is regulated and overseen by the Texas Department of Public Safety (TxDPS). TxDPS is responsible for issuing the standards for ignition interlock manufacturers in the state as well as the approval of all devices. In addition, TxDPS maintains the standards for calibration and maintenance of devices used in the state.

Selected States Ignition Interlock Laws

Colorado

Colorado's all-offender IID law went into effect on January 1, 2009 and is outlined in the Colorado Revised Statutes §42-2-126 and §42-2-132.5. Appendix A contains the full statutory language of Colorado's ignition interlock statutes.

In Colorado, a first DWI offender can expect their license to be revoked, upon conviction, for a period of 9 months. After one month, the offender has the option to install an IID and receive an Ignition Interlock Restricted License. If the first offender has a high BAC of .15 or greater, the offender's license will be revoked for two years. However, to qualify for an Ignition Interlock Restricted License, the offender must have also completed a Level II Education and Treatment Program and provide documentation of the completion. After one month, the offender has the option to install an IID and receive an Ignition Interlock Restricted License. Upon conviction, a second or subsequent DWI offender will have their license revoked for a period of two years. After one month, the offender has the option to install an IID and receive an Ignition Interlock Restricted License. However, to qualify for an Ignition Interlock Restricted License, the offender must have also completed a Level II Education and Treatment Program and provide documentation of the completion.

Colorado also includes a provision for those who refuse to provide a breath or blood sample to determine BAC at the time of driving. For first refusals, the offender can expect their license to be revoked for a period of two years. After two months, the offender has the option to install an IID and receive an Ignition Interlock Restricted License.

Colorado's IID program utilizes compliance-based removal. To be eligible to have the IID removed from their vehicle, the offender must:

- Have their device serviced every sixty days,
- Have no attempts to start the vehicle with alcohol in three of any twelve consecutive months.

Offenders who fail to meet the above conditions are subject to additional suspension and time added to their IID requirement. In addition, Colorado specifies if an offender drives a vehicle without an IID or

attempts to circumvent their IID, they are subject to further license revocation and will have no driving privileges for at least one year.

In Colorado, the requirement of an IID is typically handled administratively by the Colorado Department of Revenue Division of Motor Vehicles. However, an offender could be ordered to install an IID by the court as a part of their disposition. The Division of Motor Vehicles is also responsible for issuing the standards for ignition interlock manufacturers in the state as well as the approval of all devices.

New Mexico

New Mexico's all-offender IID law went into effect on June 17, 2005 and is outlined in the New Mexico Statutes § 66-5-33.1, § 66-5-35, § 66-5-501, § 66-5-502, § 66-5-503, § 66-5-504, § 66-8-102. Appendix A contains the full statutory language of New Mexico's ignition interlock statutes.

In New Mexico, a first DWI offender, upon conviction, can expect their license to be revoked and an IID required for a period of one year. Upon conviction, a second DWI offender will have their license revoked and an IID required for a period of two years. After a third DWI conviction, an offender can expect to have their license suspended and an IID required for a period of three years. If an offender is convicted of a fourth or more DWI offense, the offender can expect their license to be suspended and an IID required for the remainder of their life. Fourth or more offenders can approach a judge every five years to petition to have the IID requirement lifted. However, it is unclear how often this request is granted.

New Mexico's IID program utilizes compliance-based removal. To be eligible to have the IID removed from their vehicle, the offender must:

- Drive with an IID in their vehicle for a minimum of 6 months,
- Have no attempts circumvent or tamper with the IID.

Offenders must meet the above conditions to have their licenses reinstated, regardless of whether the suspension period has ended. In addition, New Mexico explicitly states that if an offender has had their driver's license suspended for a DWI or refusal to provide a breath or blood sample to determine BAC (implied consent violation), the offender can only have their license reinstated if they drive with an IID for a minimum of six months.

In New Mexico, the requirement of an IID is typically handled administratively by the New Mexico Department of Transportation Traffic Safety Bureau DWI/Compliance Unit. However, an offender could be ordered to install an IID by the court as a part of their disposition. The New Mexico Department of Transportation Traffic Safety Bureau is also responsible for issuing the standards for ignition interlock manufacturers in the state as well as the approval of all devices.

Washington

Washington's all-offender IID law went into effect on January 1, 2009 and is outlined in the Revised Code of Washington § 46.20.720, § 46.20.740, § 46.20.385. Appendix A contains the full statutory language of Washington's ignition interlock statutes.

In Washington, a first DWI offender, upon conviction, can expect their license to be revoked and an IID required for a period of one year. Upon conviction, a second DWI offender will have their license revoked and an IID required for a period of five years. After a third or subsequent DWI conviction, an

offender can expect to have their license suspended and an IID required for a period of 10 years. In addition, some offenders who are convicted of Reckless or Negligent Driving will have their license suspended and must install an IID for at least six months. In Washington, IIDs are also required any time a court orders one, regardless of the charge.

Washington’s IID program utilizes compliance-based removal. To be eligible to have the IID removed from their vehicle for the last four months prior to removal, the offender must:

- Have no attempts to start the vehicle with a BAC of .04 or more,
- Have no failed or skipped tests,
- Have no missed maintenance or calibration appointments.

Once the offender has met the above requirements, the offender must request a certificate of compliance from their ignition interlock provider, which is then submitted to the Washington State Patrol. Offenders who fail to meet the above conditions are subject to additional suspension and time added to their IID requirement. However, offenders may choose to forgo the Administrative License Revocation (ALR) process and choose to install the IID early. If the offender chooses to install an IID early, they are eligible for early removal once their IID requirement has been met as Washington officers day-for-day credit for early installations.

In Washington, the requirement of an IID is typically handled administratively by the Washington State Patrol Forensic Laboratory Services Bureau Impaired Driving Section. However, an offender could be ordered to install an IID by the court as a part of their disposition. The Washington State Patrol is also responsible for issuing the standards for ignition interlock manufacturers in the state as well as the approval of all devices.

Table 1 summarizes the key attributes of the ignition interlock statutes and programs in Texas, Colorado, New Mexico and Washington.

Table 1. States Ignition Interlock Program Attributes

State	Required for 1 st Offenders	Required for 2 nd Offenders	Required for 3 rd or More Offenders	Required Length of Time for an IID (Months)	Compliance Based Removal	Agency Responsible for Monitoring & Regulation	Statutes
Texas	Some	Yes	Yes	Half of Probation Period	No	Monitoring – County Level Regulation – TxDPS	PC § 49.09 (h) CCP 17.441 CCP § 42A.408 TC § 521.242 TC § 521.246 TC § 521.2465 TC § 521.247 TC § 521.2475 TC § 521.2476 TC § 521.342 (b)
Colorado	No	Yes	Yes	1 st – 8 2 nd – 24	Yes	Colorado Dept. of Revenue –	CRS §42-2-126 CRS §42-2-132.5

						Division of Motor Vehicles	
New Mexico	Yes	Yes	Yes	1 st – 12 2 nd – 24 3 rd – 36	Yes	NMDOT – Traffic Safety Bureau, DWI/Compliance Unit	NMSA § 66-5-33.1 NMSA § 66-5-35 NMSA § 66-5-501 NMSA § 66-5-502 NMSA § 66-5-503 NMSA § 66-5-504 NMSA § 66-8-102
Washington	Yes	Yes	Yes	1 st – 12 2 nd – 60 3 rd – 120	Yes	Washington State Patrol – Forensic Laboratory Service Bureau, Impaired Driving Section	RCW § 46.20.720 RCW § 46.20.740 RCW § 46.20.385

Focus Group Results

Through the focus groups, the research team sought to gain qualitative insight on:

- The strengths of Texas’ ignition interlock statutes.
- The weaknesses of Texas’ ignition interlock statutes.
- Application of Texas’ ignition interlock statutes.
- Impacts of newer statutes designed to incentivize IID installation.
- Recommendations to improve Texas’ ignition interlock statutes.

Over the course of the focus groups, many themes and recommended changes to the laws emerged from the conversations. The most prevalent changes recommended were:

- Simplify the Transportation Code and other laws related to IIDs. Most groups agreed the laws were convoluted and confusing. In addition, the laws related to IIDs are found across multiple codes and can be difficult to decipher, even with a law degree. It is recommended to codify and simplify the existing ignition interlock statutes, while thinking about the laws from an application and supervision standpoint.
- Create a criminal offense to the Penal Code for those who tamper with their IID, circumvent their IID, or operate a motor vehicle without an IID when ordered. Many participants hope this will incentivize offenders to comply with orders to have an IID installed and complete the program.

- Almost all groups recommended more consistent application of ignition interlock statutes across the state. Despite laws mandating the use of IIDs in some cases, judicial discretion can be under and over-utilized. In addition, violations are not reported or addressed consistently across jurisdictions and manufacturers. Consistency in this area would allow for improved supervision of offenders.
- By and large, focus group participants advocated for strengthening the rules and regulations for ignition interlock manufacturers. A well-regulated industry will provide a higher quality product that can be trusted by the courts and probation departments, which will improve supervision of offenders and reduce incidences of alcohol impaired driving.
- Most focus group participants, including the ignition interlock industry representatives, would like to see consistent reporting of ignition interlock data by the manufacturers. Standardized reporting aids the prosecutors, judges, and probation officers in reading and interpreting the reports they receive.
- Finally, many recommended moving to a compliance-based removal system. Currently, offenders must only complete a period of time, usually half of their probation period, on an IID. At the end of the time period, the IID can be removed regardless of performance. Compliance-based monitoring typically requires the offender be violation-free for a period of time before the device can be removed. This type of system has led to reductions in alcohol impaired driving as well as recidivism (Bailey et al. 2013).

Evidence of Effective Ignition Interlock Policies

A common misconception is that most people who are convicted of their first impaired driving offense are social drinkers who made a one-time mistake. However, studies have shown that the average first offender will have driven under the influence of alcohol 87 times before getting caught (Advocates for Highway & Auto Safety, 2010). To address this behavior, states have implemented laws which require the installation of an IID after a first DWI conviction. For example, New Mexico mandates that drivers install an IID after a first DWI conviction (Marutollo, 2009). New Mexico previously required interlocks only for a second or subsequent conviction, or for a first aggravated DWI conviction (Marutollo, 2009). According to MADD, New Mexico experienced a twenty-five percent drop in alcohol related fatalities the first year it enacted this mandatory law (Marutollo, 2009). In addition, research had demonstrated that first offenders who install an IID are at a lower risk to recidivate than first offenders who do not (Marques et al., 2010). Further, states with IID mandates for first offenders have seen a decrease in the number of alcohol related fatalities in a jurisdiction (Ullman, 2016).

Beyond first offenders, research has found protective effects of mandatory IID laws on alcohol-involved fatal crashes, which were associated with an estimated 7% reduction in BAC > 0.08 fatal crashes and 8% reduction in BAC ≥ 0.15 fatal crashes (McGinty et al., 2017). This translates into approximately 1,250 BAC > 0.08 fatal crashes prevented in states that implemented such laws between 1982 and 2013 (McGinty et al., 2017).

Discussion

The comparison states have several similar key characteristics of their ignition interlock programs, which leads to the overall strength of their programs. These keys are:

- Require all convicted offenders to install an IID. New Mexico and Washington both require an IID for all offenders upon conviction. In addition, New Mexico requires that all offenders install an IID for at least six months before their drivers license can be reinstated. Washington goes one step further and requires an IID for all DWI offenders as well as offenders who are convicted of related charges which may be used in the plea agreement process. By requiring an IID for related charges, Washington effectively closes the loop hole that DWI offenders exploit to avoid IID installation.
- Incentivize IID installation. Texas and two of the three comparison states incentivize the installation of an IID in various ways. Texas will allow a convicted offender access to an unrestricted drivers license for the period of their license suspension with the installation of an IID. Colorado also allows offenders access to an Ignition Interlock Restricted License during the period of their license suspension, after a one to two month waiting period, to give offenders an option to drive legally in the state. In Washington, an offender is eligible for early removal of their IID through day-for-day credit, if the offender installs the device prior to their conviction. This enables the offender to legally get back on the road much sooner.
- Utilize compliance-based removal. All three comparison states employ some type of compliance-based removal. While each program varies in the length of time and requirements, the key features are that in each state the offender must complete a period on the IID in which they have no violations for alcohol, tampering or circumventing the device. Typically, this period must be immediately preceding the removal of the device. Stakeholders favor this type of removal because offenders know their behavior is being monitored, which leads to changes in behavior and a decrease in future attempts to drive under the influence of alcohol (Marques et al. 2010; Bailey et al. 2013).
- Employ centralized administration of the IID program in the state. All three of the comparison states employ a centralized administrative agency to administer the IID program in their state. With only one agency responsible for the supervision of offenders, offenders are less likely to avoid the IID requirement associated with their conviction or license suspension. In addition, with only one agency enforcing the ignition interlock statutes, the state can ensure the statutes are applied consistently across cases.
- Have specific penalties for tampering, circumventing or failure to install the IID. All three comparison states have some penalty, either criminal or administrative, for tampering, circumventing or failure to install the IID. These clear penalties provide offenders with swift and certain sanctions for failure to comply with the orders of the court. In addition, these penalties provide a specific deterrent to successfully fulfilling their IID requirement.

During the focus group discussions, several themes emerged: simplification of the codes and statutes related to IIDs; the addition of offenses related to tampering, circumvention, and driving without an IID; more consistent application of the statutes related to IID across the state; strengthening the rules and regulations for the ignition interlock industry; consistent reporting by all of the ignition interlock manufacturers; and compliance-based removal.

According to Mothers Against Drunk Driving (MADD), model ignition interlock statutes should:

- Require no hard license suspension period prior to allowing the offender to driving with an IID after conviction.

- Require an IID for all convicted offenders with a BAC of .08 or above.
- Provide strong incentives for IID installation and compliance.
- Utilize compliance-based removal.
- Require an IID for refusing interlock for refusing to provide a breath or blood sample to determine BAC.
- Allow arrested offender the option to install an IID sooner if they waive their Administrative License Revocation (ALR) Hearing and provide day-for-day credit for IID after arrest but prior to criminal conviction.
- Require offenders to pay for the IID.
- Charge an administrative fee that allows the Department of Motor Vehicles to hire additional employees to administer the IID program.
- Have an indigent program allowing for poorer offenders to have access to IIDs.
- Have penalties for tampering, circumventing the interlock or failure to install.
- Employ a hybrid judicial and DMV IID program.
- Require lengthier IIDs sentences for those who commit a DWI with a child in their vehicle (MADD, 2018).

Based on these ideal characteristics, Texas has much room for improvement of its IID program. However, despite the overall strength of the three comparison states ignition interlock programs, each state still has some room for improvement based on this list.

Limitations

One key limitation to the methodology of this report is the selection of the comparison states was done based on 28 states that had been ranked on the eight categories of the Casanova-Powell et. al, 2015 report and did not consider all 50 states. Had all 50 states been considered, the three comparison states could have been different.

In addition, the attendance at the focus groups was lower than anticipated. While this provided for rich discussions among the attendees and facilitators, the opinions of the focus groups may not be representative of stakeholders as a whole.

Recommendations and Conclusion

From this analysis it is very clear that no two state's ignition interlock programs are alike. In fact, the complicated nature of each program can make it difficult to decipher when exactly an IID is required and for what length of time. Despite this, Texas can look to other states with strong ignition interlock programs for ways to improve its current program. In addition, Texas should consider incorporating some of the recommendations from MADD's model ignition interlock statutes recommendations. Based on the comparison to other states, focus group recommendations and MADD's model ignition interlock statutes, the following are recommended to improve Texas' ignition interlock program:

- Simplify the Transportation Code and other laws related to IIDs. For other states, the statutes are straight-forward and located in one place in statute. It is important for laws to be straight-forward and easy to implement, as often those charged with implementing the programs are not trained as lawyers. It is recommended to codify and simplify the existing ignition interlock statutes, while thinking about the laws from an application and supervision standpoint.

- Consider implementing a mandate for an IID for first offenders. While this was not a recommendation that came from the focus groups, New Mexico and Washington require an IID for first offenders. In addition, jurisdictions that have implemented first offender mandates have seen a decrease in recidivism of first offenders and the number of alcohol related fatal crashes.
- Create a criminal offense to the Penal Code for those who tamper with their IID, circumvent their IID, or operate a motor vehicle without an IID when ordered. Other states have a provision, or law, which has a specific penalty for the offender should they circumvent or tamper with their device. Further, focus group participants expressed this will incentivize offenders to comply with orders to have an IID installed and complete the program. In addition, MADD recommends penalties for circumvention, tampering with, and failure to install an IID when ordered to do so.
- Consistent application of ignition interlock statutes across the state, which could be done through a centralized agency supervising the program. Other states with strong ignition interlock programs have one centralized agency which oversees the program. MADD recommends a centralized agency, such as the Department of Motor Vehicles, administer the IID program. Texas, due to the nature of the statutes and size of the program, utilizes a decentralized system which allows each jurisdiction discretion on the application of the laws. Consistency in this area would allow for improved supervision of offenders.
- Standardize reporting among ignition interlock manufacturers. While this was not something that is codified in the other states, this is a concern among focus group participants. Most participants, including the ignition interlock industry representatives, expressed the need for consistent reporting of ignition interlock data by the manufacturers. Standardized reporting aids the prosecutors, judges, and probation officers in reading and interpreting the reports they receive.
- Texas should move to a compliance-based removal system. Currently, offenders must only complete a period of time on an IID. At the end of the time period, the IID can be removed regardless of performance. All the comparison states utilize some type of compliance-based removal system. In addition, MADD recommends states utilize a compliance-based removal system. This type of system has led to reductions in alcohol impaired driving as well as recidivism.

The implementation of these recommendations will add to the strength of Texas' current ignition interlock statutes. Ultimately, the goal with implementing changes to Texas' ignition interlock program is not to add additional work on any one agency but to reduce alcohol impaired driving and in the end make Texas' roadways safer.

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Appendix A: Ignition Interlock Statutes

Colorado

Applicable Statutes

§42-2-126

§42-2-132.5

Full Text¹

Colorado Revised Statutes

§ 42-2-126. Revocation of license based on administrative determination

(1) Legislative declaration. The purposes of this section are:

- (a) To provide safety for all persons using the highways of this state by quickly revoking the driver's license of any person who has shown himself or herself to be a safety hazard by driving with an excessive amount of alcohol in his or her body and any person who has refused to submit to an analysis as required by section 42-4-1301.1;
- (b) To guard against the potential for any erroneous deprivation of the driving privilege by providing an opportunity for a full hearing; and
- (c) Following the revocation period, to prevent the relicensing of a person until the department is satisfied that the person's alcohol problem is under control and that the person no longer constitutes a safety hazard to other highway users.

(2) Definitions. As used in this section, unless the context otherwise requires:

- (a) "Excess BAC" means that a person had a BAC level sufficient to subject the person to a license revocation for excess BAC 0.08, excess BAC underage, excess BAC CDL, or excess BAC underage CDL.
- (b) "Excess BAC 0.08" means that a person drove a vehicle in this state when the person's BAC was 0.08 or more at the time of driving or within two hours after driving.
- (c) "Excess BAC CDL" means that a person drove a commercial motor vehicle in this state when the person's BAC was 0.04 or more at the time of driving or at any time thereafter.
- (d) "Excess BAC underage" means that a person was under the age of twenty-one years and the person drove a vehicle in this state when the person's BAC was in excess of 0.02 but less than 0.08 at the time of driving or within two hours after driving.
- (e) "Excess BAC underage CDL" means that a person was under the age of twenty-one years and the person drove a commercial motor vehicle in this state when the person's BAC was in excess of 0.02 but less than 0.04 at the time of driving or at any time thereafter.
- (f) "Hearing officer" means the executive director of the department or an authorized representative designated by the executive director.

¹ Justia US State Law. <https://law.justia.com>

(g) "License" includes driving privilege.

(h) "Refusal" means refusing to take or complete, or to cooperate in the completing of, a test of the person's blood, breath, saliva, or urine as required by section 18-3-106(4) or 18-3-205(4), C.R.S., or section 42-4-1301.1(2).

(i) "Respondent" means a person who is the subject of a hearing under this section.

(3) Revocation of license. (a) Excess BAC 0.08. (I) The department shall revoke the license of a person for excess BAC 0.08 for:

(A) Nine months for a first violation committed on or after January 1, 2009; except that such a person may apply for a restricted license pursuant to the provisions of section 42-2-132.5;

(B) One year for a second violation; and

(C) Two years for a third or subsequent violation occurring on or after January 1, 2009, regardless of when the prior violations occurred; except that such a person may apply for a restricted license pursuant to the provisions of section 42-2-132.5.

(II) Deleted by Laws 2008, Ch. 221, § 3, eff. Jan. 1, 2009.

(b) Excess BAC underage. (I) The department shall revoke the license of a person for excess BAC underage for three months for a first violation, for six months for a second violation, and for one year for a third or subsequent violation.

(II)(A) Notwithstanding the provisions of subparagraph (I) of this paragraph (b), a person whose license is revoked for a first offense under subparagraph (I) of this paragraph (b) and whose BAC was not more than 0.05 may request that, in lieu of the three-month revocation, the person's license be revoked for a period of not less than thirty days, to be followed by a suspension period of such length that the total period of revocation and suspension equals three months. If the hearing officer approves the request, the hearing officer may grant the person a probationary license that may be used only for the reasons provided in section 42-2-127(14)(a).

(B) The hearing to consider a request under this subparagraph (II) may be held at the same time as the hearing held under subsection (8) of this section; except that a probationary license may not become effective until at least thirty days have elapsed since the beginning of the revocation period.

(c) Refusal. (I) Except as provided in section 42-2-132.5(4), the department shall revoke the license of a person for refusal for one year for a first violation, two years for a second violation, and three years for a third or subsequent violation; except that the period of revocation shall be at least three years if the person was driving a commercial motor vehicle that was transporting hazardous materials as defined in section 42-2-402(7).

(II) Notwithstanding the provisions of subparagraph (I) of this paragraph (c), such a person whose license has been revoked for two years for a second violation or for three years for a third or subsequent violation may apply for a restricted license pursuant to the provisions of section 42-2-132.5.

(d) Excess BAC CDL. The department shall revoke for the disqualification period provided in 49 CFR 383.51 the commercial driving privilege of a person who was the holder of a commercial driver's license or was driving a commercial motor vehicle for a violation of excess BAC 0.08, excess BAC CDL, or refusal.

(e) Excess BAC underage CDL. The department shall revoke the commercial driving privilege of a person for excess BAC underage CDL for three months for a first violation, six months for a second violation, and one year for a third or subsequent violation.

(4) Multiple restraints and conditions on driving privileges. (a)(I) Except as otherwise provided in this paragraph (a), a revocation imposed pursuant to this section for an offense committed before January 1, 2014, shall run consecutively and not concurrently with any other revocation imposed pursuant to this section.

(II) If a license is revoked for excess BAC and the person is also convicted on criminal charges arising out of the same occurrence for DUI, DUI per se, DWAI, or UDD, both the revocation under this section and any suspension, revocation, cancellation, or denial that results from the conviction shall be imposed, but the periods shall run concurrently, and the total period of revocation, suspension, cancellation, or denial shall not exceed the longer of the two periods.

(III)(A) If a license is revoked for refusal for an offense committed before January 1, 2014, the revocation shall not run concurrently, in whole or in part, with any previous or subsequent suspensions, revocations, or denials that may be provided for by law, including but not limited to any suspension, revocation, or denial that results from a conviction of criminal charges arising out of the same occurrence for a violation of section 42-4-1301 .

(B) If a license is revoked for refusal for an offense committed on or after January 1, 2014, and the person is also convicted on criminal charges arising out of the same occurrence for DUI, DUI per se, DWAI, or UDD, both the revocation under this section and any suspension, revocation, cancellation, or denial that results from the conviction shall be imposed, but the periods shall run concurrently. The total period of revocation, suspension, cancellation, or denial shall not exceed the longer of the two periods.

(IV) The revocation of the commercial driving privilege under excess BAC CDL may run concurrently with another revocation pursuant to this section arising out of the same incident.

(V) Any revocation for refusal shall not preclude other action that the department is required to take in the administration of this title.

(b)(I) The periods of revocation specified in subsection (3) of this section are intended to be minimum periods of revocation for the described conduct. Except as described in section 42-2-132.5, a license shall not be restored under any circumstances, and a probationary license shall not be issued, during the revocation period.

(II) Notwithstanding the provisions of subparagraph (I) of this paragraph (b), a person whose privilege to drive a commercial motor vehicle has been revoked because of excess BAC CDL and who was twenty-one years of age or older at the time of the offense may apply for a driver's license of another class or type as long as there is no other statutory reason to deny the person a license. The department may not issue the person a probationary license that would authorize the person to operate a commercial motor vehicle.

(c) Upon the expiration of the period of revocation under this section, if a person's license is still suspended on other grounds, the person may seek a probationary license as authorized by section 42-2-127(14) subject to the requirements of paragraph (d) of this subsection (4).

(d)(I) Following a license revocation, the department shall not issue a new license or otherwise restore the driving privilege unless the department is satisfied, after an investigation of the character, habits, and driving ability of the person, that it will be safe to grant the privilege of driving a motor vehicle on the highways to the person; except that the department may not require a person to undergo skills or knowledge testing prior to issuance of a new license or restoration of the person's driving privilege if the person's license was revoked for a first violation of excess BAC 0.08 or excess BAC underage.

(II)(A) If a person was determined to be driving with excess BAC and the person had a BAC that was 0.15 or more or if the person's driving record otherwise indicates a designation as a persistent drunk driver as defined in section 42-1-102(68.5) , the department shall require the person to complete a level II alcohol and drug education and treatment program certified by the unit in the department of human services that administers behavioral health programs and services, including those related to mental health and substance abuse, pursuant to section 42-4-1301.3 as a condition to restoring driving privileges to the person and, upon the restoration of driving privileges, shall require the person to hold a restricted license requiring the use of an ignition interlock device pursuant to section 42-2-132.5(1)(a)(II) .

(B) If a person seeking reinstatement is required to complete, but has not yet completed, a level II alcohol and drug education and treatment program, the person shall file with the department proof of current enrollment in a level II alcohol and drug education and treatment program certified by the unit in the department of human services that administers behavioral health programs and services, including those related to mental health and substance abuse, pursuant to section 42-4-1301.3 , on a form approved by the department.

(5) Actions of law enforcement officer. (a) If a law enforcement officer has probable cause to believe that a person should be subject to license revocation for excess BAC or refusal, the law enforcement officer shall forward to the department an affidavit containing information relevant to the legal issues and facts that shall be considered by the department to determine whether the person's license should be revoked as provided in subsection (3) of this section. The executive director of the department shall specify to law enforcement agencies the form of the affidavit to be used under this paragraph (a) and the types of information needed in the affidavit and may specify any additional documents or copies of documents needed by the department to make its determination in addition to the affidavit. The affidavit shall be dated, signed, and sworn to by the law enforcement officer under penalty of perjury, but need not be notarized or sworn to before any other person.

(b)(I) A law enforcement officer, on behalf of the department, shall personally serve a notice of revocation on a person who is still available to the law enforcement officer if the law enforcement officer determines that, based on a refusal or on test results available to the law enforcement officer, the person's license is subject to revocation for excess BAC or refusal.

(II) When a law enforcement officer serves a notice of revocation, the law enforcement officer shall take possession of any driver's license issued by this state or any other state that the person holds. When the law enforcement officer takes possession of a valid driver's license issued by this state or any other state, the law enforcement officer, acting on behalf of the department, shall issue a temporary permit that is valid for seven days after the date of issuance.

(III) A copy of the completed notice of revocation form, a copy of any completed temporary permit form, and any driver's, minor driver's, or temporary driver's license or any instruction permit taken into

possession under this section shall be forwarded to the department by the law enforcement officer along with an affidavit as described in paragraph (a) of this subsection (5) and any additional documents or copies of documents as described in said paragraph (a).

(IV) The department shall provide to law enforcement agencies forms for notice of revocation and for temporary permits. The law enforcement agencies shall use the forms for the notice of revocation and for temporary permits and shall follow the form and provide the information for affidavits as provided by the department pursuant to paragraph (a) of this subsection (5).

(V) A law enforcement officer shall not issue a temporary permit to a person who is already driving with a temporary permit issued pursuant to subparagraph (II) of this paragraph (b).

(6) Initial determination and notice of revocation. (a) Upon receipt of an affidavit of a law enforcement officer and the relevant documents required by paragraph (a) of subsection (5) of this section, the department shall determine whether the person's license should be revoked under subsection (3) of this section. The determination shall be based upon the information contained in the affidavit and the relevant documents submitted to the department, and the determination shall be final unless a hearing is requested and held as provided in subsection (8) of this section. The determination of these facts by the department is independent of the determination of a court of the same or similar facts in the adjudication of any criminal charges arising out of the same occurrence. The disposition of the criminal charges shall not affect any revocation under this section.

(b)(I) If the department determines that the person is subject to license revocation, the department shall issue a notice of revocation if a notice has not already been served upon the person by the law enforcement officer as provided in paragraph (b) of subsection (5) of this section. A notice of revocation shall clearly specify the reason and statutory grounds for the revocation, the effective date of the revocation, the right of the person to request a hearing, the procedure for requesting a hearing, and the date by which a request for a hearing must be made.

(II) In sending a notice of revocation, the department shall mail the notice in accordance with the provisions of section 42-2-119(2) to the person at the last-known address shown on the department's records, if any, and to any address provided in the law enforcement officer's affidavit if that address differs from the address of record. The notice shall be deemed received three days after mailing.

(c) If the department determines that the person is not subject to license revocation, the department shall notify the person of its determination and shall rescind any order of revocation served upon the person by the law enforcement officer.

(d) A license revocation shall become effective seven days after the person has received the notice of revocation as provided in subsection (5) of this section or is deemed to have received the notice of revocation by mail as provided in paragraph (b) of this subsection (6). If the department receives a written request for a hearing pursuant to subsection (7) of this section within that same seven-day period and the department issues a temporary permit pursuant to paragraph (d) of subsection (7) of this section, the effective date of the revocation shall be stayed until a final order is issued following the hearing; except that any delay in the hearing that is caused or requested by the person or counsel representing the person shall not result in a stay of the revocation during the period of delay.

(7) Request for hearing. (a) A person who has received a notice of revocation may make a written request for a review of the department's determination at a hearing. The request may be made on a form available at each office of the department.

(b) A person must request a hearing in writing within seven days after the day the person receives the notice of revocation as provided in subsection (5) of this section or is deemed to have received the notice by mail as provided in paragraph (b) of subsection (6) of this section. If the department does not receive the written request for a hearing within the seven-day period, the right to a hearing is waived, and the determination of the department that is based on the documents and affidavit required by subsection (5) of this section becomes final.

(c) If a person submits a written request for a hearing after expiration of the seven-day period and if the request is accompanied by the person's verified statement explaining the failure to make a timely request for a hearing, the department shall receive and consider the request. If the department finds that the person was unable to make a timely request due to lack of actual notice of the revocation or due to factors of physical incapacity such as hospitalization or incarceration, the department shall waive the period of limitation, reopen the matter, and grant the hearing request. In such a case, the department shall not grant a stay of the revocation pending issuance of the final order following the hearing.

(d) At the time a person requests a hearing pursuant to this subsection (7), if it appears from the record that the person is the holder of a valid driver's or minor driver's license or of an instruction permit or of a temporary permit issued pursuant to paragraph (b) of subsection (5) of this section and that the license or permit has been surrendered, the department shall stay the effective date of the revocation and issue a temporary permit that shall be valid until the scheduled date for the hearing. If necessary, the department may later extend the temporary permit or issue an additional temporary permit in order to stay the effective date of the revocation until the final order is issued following the hearing, as required by subsection (8) of this section. If the person notifies the department in writing at the time that the hearing is requested that the person desires the law enforcement officer's presence at the hearing, the department shall issue a written notice for the law enforcement officer to appear at the hearing. A law enforcement officer who is required to appear at a hearing may, at the discretion of the hearing officer, appear in real time by telephone or other electronic means in accordance with section 42-1-218.5.

(e) At the time that a person requests a hearing, the department shall provide to the person written notice advising the person:

(I) Of the right to subpoena the law enforcement officer for the hearing and that the subpoena must be served upon the law enforcement officer at least five calendar days prior to the hearing;

(II) Of the person's right at that time to notify the department in writing that the person desires the law enforcement officer's presence at the hearing and that, upon receiving the notification, the department shall issue a written notice for the law enforcement officer to appear at the hearing;

(III) That, if the law enforcement officer is not required to appear at the hearing, documents and an affidavit prepared and submitted by the law enforcement officer will be used at the hearing; and

(IV) That the affidavit and documents submitted by the law enforcement officer may be reviewed by the person prior to the hearing.

(f) Any subpoena served upon a law enforcement officer for attendance at a hearing conducted pursuant to this section shall be served at least five calendar days before the day of the hearing.

(8) Hearing. (a)(I) The hearing shall be scheduled to be held as quickly as practicable but not more than sixty days after the date the department receives the request for a hearing; except that, if a hearing is rescheduled because of the unavailability of a law enforcement officer or the hearing officer in accordance with subparagraph (III) or (IV) of this paragraph (a), the hearing may be rescheduled more than sixty days after the date the department receives the request for the hearing, and the department shall continue any temporary driving privileges held by the person until the date to which the hearing is rescheduled. At least ten days prior to the scheduled or rescheduled hearing, the department shall provide in the manner specified in section 42-2-119(2) a written notice of the time and place of the hearing to the respondent unless the parties agree to waive this requirement. Notwithstanding the provisions of section 42-2-119, the last-known address of the respondent for purposes of notice for any hearing pursuant to this section shall be the address stated on the hearing request form.

(II) A law enforcement officer who submits the documents and affidavit required by subsection (5) of this section need not be present at the hearing unless the hearing officer requires that the law enforcement officer be present and the hearing officer issues a written notice for the law enforcement officer's appearance or unless the respondent or the respondent's attorney determines that the law enforcement officer should be present and serves a timely subpoena upon the law enforcement officer in accordance with paragraph (f) of subsection (7) of this section.

(III) If a law enforcement officer, after receiving a notice or subpoena to appear from either the department or the respondent, is unable to appear at the original or rescheduled hearing date due to a reasonable conflict, including but not limited to training, vacation, or personal leave time, the law enforcement officer or the law enforcement officer's supervisor shall contact the department not less than forty-eight hours prior to the hearing and reschedule the hearing to a time when the law enforcement officer will be available. If the law enforcement officer cannot appear at the original or rescheduled hearing because of medical reasons, a law enforcement emergency, another court or administrative hearing, or any other legitimate, just cause as determined by the department, and the law enforcement officer or the law enforcement officer's supervisor gives notice of the law enforcement officer's inability to appear to the department prior to the dismissal of the revocation proceeding, the department shall reschedule the hearing following consultation with the law enforcement officer or the law enforcement officer's supervisor at the earliest possible time when the law enforcement officer and the hearing officer will be available.

(IV) If a hearing officer cannot appear at an original or rescheduled hearing because of medical reasons, a law enforcement emergency, another court or administrative hearing, or any other legitimate, just cause, the hearing officer or the department may reschedule the hearing at the earliest possible time when the law enforcement officer and the hearing officer will be available.

(b) The hearing shall be held in the district office nearest to where the violation occurred, unless the parties agree to a different location; except that, at the discretion of the department, all or part of the hearing may be conducted in real time, by telephone or other electronic means in accordance with section 42-1-218.5.

(c) The department shall consider all relevant evidence at the hearing, including the testimony of any law enforcement officer and the reports of any law enforcement officer that are submitted to the department. The report of a law enforcement officer shall not be required to be made under oath, but the report shall identify the law enforcement officer making the report. The department may consider evidence contained in affidavits from persons other than the respondent, so long as the affidavits include the affiant's home or work address and phone number and are dated, signed, and sworn to by the affiant under penalty of perjury. The affidavit need not be notarized or sworn to before any other person.

(d) The hearing officer shall have authority to:

(I) Administer oaths and affirmations;

(II) Compel witnesses to testify or produce books, records, or other evidence;

(III) Examine witnesses and take testimony;

(IV) Receive and consider any relevant evidence necessary to properly perform the hearing officer's duties as required by this section;

(V) Take judicial notice as defined by rule 201 of article II of the Colorado rules of evidence, subject to the provisions of section 24-4-105(8), C.R.S., which shall include:

(A) Judicial notice of general, technical, or scientific facts within the hearing officer's knowledge;

(B) Judicial notice of appropriate and reliable scientific and medical information contained in studies, articles, books, and treatises; and

(C) Judicial notice of charts prepared by the department of public health and environment pertaining to the maximum BAC levels that people can obtain through the consumption of alcohol when the charts are based upon the maximum absorption levels possible of determined amounts of alcohol consumed in relationship to the weight and gender of the person consuming the alcohol;

(VI) Issue subpoenas duces tecum to produce books, documents, records, or other evidence;

(VII) Issue subpoenas for the attendance of witnesses;

(VIII) Take depositions or cause depositions or interrogatories to be taken;

(IX) Regulate the course and conduct of the hearing; and

(X) Make a final ruling on the issues.

(e) When an analysis of the respondent's BAC is considered at a hearing:

(I) If the respondent establishes, by a preponderance of the evidence, that the respondent consumed alcohol between the time that the respondent stopped driving and the time of testing, the preponderance of the evidence must also establish that the minimum required BAC was reached as a result of alcohol consumed before the respondent stopped driving; and

(II) If the evidence offered by the respondent shows a disparity between the results of the analysis done on behalf of the law enforcement agency and the results of an analysis done on behalf of the respondent, and a preponderance of the evidence establishes that the blood analysis conducted on

behalf of the law enforcement agency was properly conducted by a qualified person associated with a laboratory certified by the department of public health and environment using properly working testing devices, there shall be a presumption favoring the accuracy of the analysis done on behalf of the law enforcement agency if the analysis showed the BAC to be 0.096 or more. If the respondent offers evidence of blood analysis, the respondent shall be required to state under oath the number of analyses done in addition to the one offered as evidence and the names of the laboratories that performed the analyses and the results of all analyses.

(f) The hearing shall be recorded. The hearing officer shall render a decision in writing, and the department shall provide a copy of the decision to the respondent.

(g) If the respondent fails to appear without just cause, the right to a hearing shall be waived, and the determination of the department which is based upon the documents and affidavit required in subsection (5) of this section shall become final.

(h) Pursuant to section 42-1-228, a driver may challenge the validity of the law enforcement officer's initial contact with the driver and the driver's subsequent arrest for DUI, DUI per se, or DWAI. If a driver so challenges the validity of the law enforcement officer's initial contact, and the evidence does not establish that the initial contact or arrest was constitutionally and statutorily valid, the driver is not subject to license revocation.

(9) Appeal. (a) Within thirty-five days after the department issues its final determination under this section, a person aggrieved by the determination has the right to file a petition for judicial review in the district court in the county of the person's residence.

(b) Judicial review of the department's determination shall be on the record without taking additional testimony. If the court finds that the department exceeded its constitutional or statutory authority, made an erroneous interpretation of the law, acted in an arbitrary and capricious manner, or made a determination that is unsupported by the evidence in the record, the court may reverse the department's determination.

(c) A filing of a petition for judicial review shall not result in an automatic stay of the revocation order. The court may grant a stay of the order only upon a motion and hearing and upon a finding that there is a reasonable probability that the person will prevail upon the merits.

(10) Notice to vehicle owner. If the department revokes a person's license pursuant to paragraph (a), (c), or (d) of subsection (3) of this section, the department shall mail a notice to the owner of the motor vehicle used in the violation informing the owner that:

(a) The motor vehicle was driven in an alcohol-related driving violation; and

(b) Additional alcohol-related violations involving the motor vehicle by the same driver may result in a requirement that the owner file proof of financial responsibility under the provisions of section 42-7-406(1.5).

(11) Applicability of “State Administrative Procedure Act”. The “State Administrative Procedure Act”, article 4 of title 24, C.R.S., shall apply to this section to the extent it is consistent with subsections (7), (8), and (9) of this section relating to administrative hearings and judicial review.

Colorado Revised Statutes

§ 42-2-132. Period of suspension or revocation

(1) The department shall not suspend a driver's or minor driver's license to drive a motor vehicle on the public highways for a period of more than one year, except as permitted under section 42-2-138 and except for noncompliance with the provisions of subsection (4) of this section or section 42-7-406, or both.

(2) (a) (I) Any person whose license or privilege to drive a motor vehicle on the public highways has been revoked is not entitled to apply for a probationary license, and, except as provided in sections 42-2-125, 42-2-126, 42-2-132.5, 42-2-138, 42-2-205, and 42-7-406, the person is not entitled to make application for a new license until the expiration of one year from the effective date of the revocation; then the person may make application for a new license as provided by law.

(II) (A) Following the period of revocation set forth in this subsection (2), the department shall not issue a new license unless and until it is satisfied that the person has demonstrated knowledge of the laws and driving ability through the appropriate motor vehicle testing process, and that the person whose license was revoked pursuant to section 42-2-125 for a second or subsequent alcohol- or drug-related driving offense has completed not less than a level II alcohol and drug education and treatment program certified by the office of behavioral health in the department of human services pursuant to section 42-4-1301.3.

(B) If the person was in violation of section 42-2-126 (3)(a) and the person had a BAC that was 0.15 or more at the time of driving or within two hours after driving, or if the person's driving record otherwise indicates a designation as a persistent drunk driver as defined in section 42-1-102 (68.5), the department shall require the person to complete a level II alcohol and drug education and treatment program certified by the office of behavioral health in the department of human services pursuant to section 42-4-1301.3, and, upon the restoration of driving privileges, shall require the person to hold a restricted license requiring the use of an ignition interlock device pursuant to section 42-2-132.5 (1)(a)(II).

(C) If a person seeking reinstatement has not completed the required level II alcohol and drug education and treatment program, the person shall file with the department proof of current enrollment in a level II alcohol and drug education and treatment program certified by the office of behavioral health in the department of human services pursuant to section 42-4-1301.3, on a form approved by the department.

(III) In the case of a minor driver whose license has been revoked as a result of one conviction for DUI, DUI per se, DWAI, or UDD, the minor driver, unless otherwise required after an evaluation made pursuant to section 42-4-1301.3, must complete a level I alcohol and drug education program certified by the office of behavioral health in the department of human services.

(IV) Any person whose license or privilege to drive a motor vehicle on the public highways has been revoked under section 42-2-125 (1)(g)(I) or (1)(i) or 42-2-203 where the revocation was due in part to a DUI, DUI per se, or DWAI conviction shall be required to present an affidavit stating that the person has

obtained at the person's own expense a signed lease agreement for the installation and use of an approved ignition interlock device, as defined in section 42-2-132.5 (9)(a), in each motor vehicle on which the person's name appears on the registration and any other vehicle that the person may drive during the period of the interlock-restricted license.

(V) The department shall take into consideration any probationary terms imposed on such person by any court in determining whether any revocation shall be continued.

(b) Repealed.

(c) A person whose driving privilege is restored prior to a hearing on the merits of any driving restraint waives the person's right to a hearing on the merits of the driving restraint.

(3) Any person making false application for a new license before the expiration of the period of suspension or revocation commits a class 2 misdemeanor traffic offense. The department shall notify the district attorney's office in the county where such violation occurred, in writing, of all violations of this section.

(4) (a) (I) Any person whose license or other privilege to operate a motor vehicle in this state has been suspended, cancelled, or revoked, pursuant to either this article or article 4 or 7 of this title, shall pay a restoration fee of ninety-five dollars to the executive director of the department prior to the issuance to the person of a new license or the restoration of the license or privilege.

(II) Notwithstanding the amount specified for the fee in subparagraph (I) of this paragraph (a), the executive director of the department by rule or as otherwise provided by law may reduce the amount of the fee if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of the fee is credited. After the uncommitted reserves of the fund are sufficiently reduced, the executive director of the department by rule or as otherwise provided by law may increase the amount of the fee as provided in section 24-75-402 (4), C.R.S.

(b) The department shall transmit the restoration fees collected under this subsection (4) to the state treasurer, who shall credit:

(I) (A) Seventy-three dollars to the driver's license administrative revocation account in the highway users tax fund, which account is hereby created and referred to in this subparagraph (I) as the "account".

(B) The moneys in the account shall be subject to annual appropriation by the general assembly for the direct and indirect costs incurred by the department in the administration of driver's license restraints pursuant to either this article or article 4 or article 7 of this title, including, but not limited to, the direct and indirect costs of providing administrative hearings under this title, without the use of moneys from the general fund. At the end of each fiscal year, any unexpended and unencumbered moneys remaining in the account shall be transferred out of the account, credited to the highway users tax fund, and allocated and expended as specified in section 43-4-205 (5.5)(c), C.R.S.; and (II) (A) Twenty-two dollars to the first time drunk driving offender account in the highway users tax fund, which account is hereby created and referred to in this subparagraph (II) as the "account". (B) The moneys in the account shall be subject to annual appropriation by the general assembly on and after January 1, 2009, first to the department of revenue to pay its costs associated with the implementation of House Bill 08-1194, as

enacted in 2008, and to pay its costs associated with the implementation of House Bill 13-1240, enacted in 2013; second, to the department of revenue to pay a portion of the costs for an ignition interlock device as described by section 42-2-132.5 (4)(a)(II)(C) for a first time drunk driving offender who is unable to pay the costs of the device; third, to the department of revenue to pay a portion of the costs for an ignition interlock device for a persistent drunk driver who is unable to pay the costs of the device and who installs the ignition interlock device on his or her vehicle on or after January 1, 2014; and then to provide two million dollars to the department of transportation for high visibility drunk driving enforcement pursuant to section 43-4-901, C.R.S. Any moneys in the account not expended for these purposes may be invested by the state treasurer as provided by law. All interest and income derived from the investment and deposit of moneys in the account shall be credited to the account. At the end of each fiscal year, any unexpended and unencumbered moneys remaining in the account shall remain in the account and shall not be credited or transferred to the general fund, the highway users tax fund, or another fund.

Colorado Revised Statutes

§ 42-2-132.5. Mandatory and voluntary restricted licenses following alcohol convictions – rules

(1) Persons required to hold an interlock-restricted license. (a) The following persons shall hold an interlock-restricted license pursuant to this section for at least one year following reinstatement prior to being eligible to obtain any other driver's license issued under this article:

(I) A person whose license has been revoked for excess BAC pursuant to the provisions of section 42-2-126 when the person's BAC was 0.15 or more at the time of driving or within two hours after driving or whose driving record otherwise indicates a designation of persistent drunk driver as defined in section 42-1-102 (68.5);

(II) A person whose privilege to drive was revoked as an habitual offender under section 42-2-203 in which the revocation was due in part to a DUI, DUI per se, or DWAI conviction; or

(III) A person whose privilege to drive was revoked for interlock circumvention pursuant to paragraph (a) or (b) of subsection (7) of this section. (b) A person whose privilege to drive was revoked for multiple convictions for any combination of a DUI, DUI per se, or DWAI pursuant to section 42-2-125 (1)(g)(I) or (1)(i) shall hold an interlock-restricted license pursuant to this section for at least two years, but not more than five years, following reinstatement prior to being eligible to obtain any other driver's license issued under this article.

(2) Posting the interlock restriction to driving record prior to reinstatement of driving privileges. As soon as a person meets the conditions of subsection (1) of this section, the department shall note on the driving record of a person required to hold an interlock-restricted license under this section that the person is required to have an approved ignition interlock device. A person whose driving record contains the notation required by this subsection (2) shall not operate a motor vehicle without an approved ignition interlock device until the restriction is removed pursuant to this section.

(3) Minimum interlock restriction requirement for persistent drunk drivers. A person required to hold an interlock-restricted license pursuant to this section who is a persistent drunk driver as defined in section 42-1-102 (68.5), based on an offense that occurred on or after July 1, 2004, shall be required to hold the interlock-restricted license for at least two years following reinstatement before being eligible to obtain any other driver's license issued under this article.

(4) Persons who may acquire an interlock-restricted license prior to serving a full-term revocation. (a) (I) A person whose privilege to drive has been revoked for one year or more because of a DUI, DUI per se, or DWAI conviction or has been revoked for one year or more for excess BAC under any provision of section 42-2-126 may apply for an early reinstatement with an interlock-restricted license under the provisions of this section after the person's privilege to drive has been revoked for one month; except that a person who is less than twenty-one years of age at the time of the offense may not apply for early reinstatement until his or her license has been revoked for one year. A person whose privilege to drive has been revoked for one year or more because of a refusal may apply for an early reinstatement with an interlock-restricted license under the provisions of this section after the person's privilege to drive has been revoked for two months; except that a person who is less than twenty-one years of age at the time of the offense may not apply for early reinstatement until his or her license has been revoked for one year. Except for first-time offenders as provided in subparagraph (II) of this paragraph (a) or for persistent drunk drivers as provided in subsection (3) of this section, the restrictions imposed pursuant to this section shall remain in effect for the longer of one year or the total time period remaining on the license restraint prior to early reinstatement.

(II) (A) First-time offender eligibility. For revocations for convictions for DUI or DUI per se under section 42-2-125 (1)(b.5) or for excess BAC 0.08 under section 42-2-126 (3)(a)(I) for a first violation that requires only a nine-month revocation, a person twenty-one years of age or older at the time of the offense may apply for an early reinstatement with an interlock-restricted license under the provisions of this section after the person's privilege to drive has been revoked for at least one month. Except as provided in subsection (3) of this section and sub-subparagraph (B) of this subparagraph (II), the restrictions imposed pursuant to this subparagraph (II) shall remain in effect for at least eight months.

(B) First-time offender interlock removal. A person with an interlock-restricted license issued pursuant to sub-subparagraph (A) of this subparagraph (II) shall be eligible for a license without the restriction required by this section if the department's monthly monitoring reports required in subsection (6) of this section show that, for four consecutive monthly reporting periods, the approved ignition interlock device did not interrupt or prevent the normal operation of the motor vehicle due to an excessive breath alcohol content or did not detect that there has been tampering with the device, there have been no other reports of circumvention or tampering, and there are no grounds to extend the restriction pursuant to paragraph (d) of subsection (7) of this section. If the department determines that a person is eligible for a license without the restriction required by this section pursuant to this sub-subparagraph (B), the department shall serve upon the person a notice of such eligibility. A person who has not been served but who believes he or she is eligible for a license without the restriction required by this section pursuant to this sub-subparagraph (B) may request a hearing on his or her eligibility. The provisions of this sub-subparagraph (B) do not apply to a person covered by subsection (3) of this section.

(C) Financial assistance for first-time offenders and persistent drunk drivers. The department shall establish a program to assist persons who apply for an interlock-restricted license pursuant to this subparagraph (II) or pursuant to subparagraph (I) of paragraph (a) of this subsection (4) and who are unable to pay the full cost of an approved ignition interlock device. The program shall be funded from the first time drunk driving offender account in the highway users tax fund established pursuant to section 42-2-132 (4)(b)(II).

(b) Early reinstatement eligibility requirement. (I) To be eligible for early reinstatement with an interlock-restricted license pursuant to this subsection (4), a person shall have satisfied all conditions for reinstatement imposed by law including time periods for non-alcohol-related restraints; except that a

person whose license was also restrained for driving under restraint pursuant to section 42-2-138 may be eligible for early reinstatement under this section so long as the restraint was caused in part by driving activity occurring after an alcohol-related offense and the length of any license restriction under this section includes the period of restraint under section 42-2-138.

(II) Before being eligible for early reinstatement with an interlock-restricted license under this section, a person shall provide proof of financial responsibility to the department pursuant to the requirements of the "Motor Vehicle Financial Responsibility Act", article 7 of this title. The person shall maintain such proof of financial responsibility with the department for the longer of three years or the period that the person's license is restricted under this section; except that, for an offender subject to section 42-7-408 (1)(c)(I), the period of time that the person must maintain such proof of financial responsibility is the period of time that the person's license is restricted under this section.

(c) In order to be eligible for early reinstatement pursuant to this subsection (4), a person who has been designated a habitual offender under the provisions of section 42-2-202 must have at least one conviction for DUI, DUI per se, or DWAI under section 42-4-1301 and no contributing violations other than violations for driving under restraint under section 42-2-138 or reckless driving under section 42-4-1401.

(5) Requirements for issuing the interlock-restricted license. (a) The department may issue an interlock-restricted license under this section if the department receives from a person described in this section an affidavit stating that the person has obtained:

(I) A signed lease agreement for the installation and use of an approved ignition interlock device in each motor vehicle on which the person's name appears on the registration and any other vehicle that the person may drive during the period of the interlock-restricted license; and

(II) The written consent of all other owners, if any, of each motor vehicle in which the approved ignition interlock device is installed.

(b) (I) Notwithstanding the requirements of paragraph (a) of this subsection (5), the department may issue an interlock-restricted license to any person not seeking early reinstatement but who is required to hold an interlock-restricted license pursuant to subsection (1) of this section who is not the registered owner or co-owner of a motor vehicle if the person submits an affidavit stating that the person is not the owner or co-owner of a motor vehicle and has no access to a motor vehicle in which to install an approved ignition interlock device.

(II) If a person holding an interlock-restricted license issued pursuant to this paragraph (b) becomes an owner or co-owner of a motor vehicle or otherwise has access to a motor vehicle in which an approved ignition interlock device may be installed, he or she shall enter into a lease agreement for the installation and use of an approved ignition interlock device on the vehicle for a period equal to the remaining period of the interlock-restricted license and submit the affidavit described in paragraph (a) of this subsection (5).

(c) The terms of the interlock-restricted license shall prohibit the person from driving a motor vehicle other than a vehicle in which an approved ignition interlock device is installed.

(d) The department shall not issue a license under this section that authorizes the operation of a commercial motor vehicle as defined in section 42-2-402 (4) during the restriction required by this section.

(6) Interlock monitoring device - reports. The leasing agency for any approved ignition interlock device shall provide monthly monitoring reports for the device to the department to monitor compliance with the provisions of this section. The leasing agency shall check the device at least once every sixty days to ensure that the device is operating and that there has been no tampering with the device. If the leasing agency detects that there has been tampering with the device, the leasing agency shall notify the department of that fact within five days of the detection.

(7) Licensing sanctions for violating the interlock restrictions. (a) Due to circumvention - conviction. Upon receipt of notice of a conviction under subsection (10) of this section, the department shall revoke any interlock-restricted license issued to the convicted person pursuant to this section. The department shall not reinstate the interlock-restricted license for a period of one year or the remaining period of license restraint imposed prior to the issuance of an interlock-restricted license pursuant to this section, whichever is longer. A person is entitled to a hearing on the question of whether the revocation is sustained and the calculation of the length of the ineligibility.

(b) Due to circumvention - administrative record. Upon receipt of an administrative record other than a notice of a conviction described in paragraph (a) of this subsection (7) establishing that a person who is subject to the restrictions of this section has operated a motor vehicle without an approved ignition interlock device or has circumvented or attempted to circumvent the proper use of an approved ignition interlock device, the department may revoke any license issued to the person pursuant to this section and not reinstate the license for a period of one year or the remaining period of license restraint imposed prior to the issuance of an interlock-restricted license pursuant to this section, whichever is longer. A person is entitled to a hearing on the question of whether the license should be revoked and the calculation of the length of the ineligibility.

(c) Due to a lease violation. If a lease for an approved ignition interlock device is terminated for any reason before the period of the interlock restriction expires and the licensee provides no other such lease, the department shall notify the licensee that the department shall suspend the license until the licensee enters into a new signed lease agreement for the remaining period of the interlock restriction.

(d) Extending the interlock license restriction. If the monthly monitoring reports required by subsection (6) of this section show that the approved ignition interlock device interrupted or prevented the normal operation of the vehicle due to excessive breath alcohol content in three of any twelve consecutive reporting periods, the department shall extend the interlock restriction on the person's license for an additional twelve months after the expiration of the existing interlock restriction. The department shall notify the person that the ignition interlock restriction is being extended and that his or her license shall be suspended unless the person enters into a new signed lease agreement for the use of an approved ignition interlock device for the extended period. The person is entitled to a hearing on the extension of the restriction. Based upon findings at the hearing, including aggravating and mitigating factors, the hearing officer may sustain the extension, rescind the extension, or reduce the period of extension.

(8) Rules. The department may promulgate rules to implement the provisions of this section.

(9) Approved ignition interlock device definition - rules. (a) For the purposes of this section, "approved ignition interlock device" means a device approved by the department of public health and environment that is installed in a motor vehicle and that measures the breath alcohol content of the driver before a vehicle is started and that periodically requires additional breath samples during vehicle operation. The device may not allow a motor vehicle to be started or to continue normal operation if the device

measures an alcohol level above the level established by the department of public health and environment.

(b) The state board of health may promulgate rules to implement the provisions of this subsection (9) concerning approved ignition interlock devices.

(10) Operating vehicle after circumventing interlock device. (a) A person whose privilege to drive is restricted to the operation of a motor vehicle equipped with an approved ignition interlock device and who operates a motor vehicle other than a motor vehicle equipped with an approved ignition interlock device or who circumvents or attempts to circumvent the proper use of an approved ignition interlock device commits a class 1 traffic misdemeanor.

(b) If a peace officer issues a citation pursuant to paragraph (a) of this subsection (10), the peace officer shall immediately confiscate the offending driver's license, shall file an incident report on a form provided by the department, and shall not permit the driver to continue to operate the motor vehicle.

(c) A court shall not accept a plea of guilty to another offense from a person charged with a violation of paragraph (a) of this subsection (10); except that the court may accept a plea of guilty to another offense upon a good-faith representation by the prosecuting attorney that the attorney could not establish a prima facie case if the defendant were brought to trial on the offense.

(11) Tampering with an approved ignition interlock device. (a) A person shall not intercept, bypass, or interfere with or aid any other person in intercepting, bypassing, or interfering with an approved ignition interlock device for the purpose of preventing or hindering the lawful operation or purpose of the approved ignition interlock device required under this section.

(b) A person whose privilege to drive is restricted to the operation of a motor vehicle equipped with an approved ignition interlock device shall not drive a motor vehicle in which an approved ignition interlock device is installed pursuant to this section if the person knows that any person has intercepted, bypassed, or interfered with the approved ignition interlock device.

(c) A person violating any provision of this subsection (11) commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

New Mexico

Applicable Statutes

§ 66-5-33.1

§ 66-5-35

§ 66-5-501

§ 66-5-502

§ 66-5-503

§ 66-5-504

§ 66-8-102

Full Text²

New Mexico Statutes

§ 66-5-33.1. Reinstatement of driver's license or registration; ignition interlock; fee. (2009)

A. Whenever a driver's license or registration is suspended or revoked and an application has been made for its reinstatement, compliance with all appropriate provisions of the Motor Vehicle Code [66-1-1 NMSA 1978] and the payment of a fee of twenty-five dollars (\$25.00) is a prerequisite to the reinstatement of any license or registration.

B. If a driver's license was revoked for driving while under the influence of intoxicating liquor or drugs, for aggravated driving while under the influence of intoxicating liquor or drugs or pursuant to the Implied Consent Act [66-8-105 NMSA 1978], the following are required to reinstate the driver's license:

- (1) an additional fee of seventy-five dollars (\$75.00);
- (2) completion of the license revocation period;
- (3) satisfaction of any court-ordered ignition interlock requirements; and
- (4) a minimum of six months of driving with an ignition interlock license with no attempts to circumvent or tamper with the ignition interlock device.

C. The department may reinstate the driving privileges of an out-of-state resident without the requirement that the person obtain an ignition interlock license for a minimum of six months, if the following conditions are met:

- (1) the license revocation period is completed;
- (2) satisfactory proof is presented to the department that the person is no longer a resident of New Mexico; and
- (3) the license reinstatement fee is paid.

D. Fees collected pursuant to Subsection B of this section are appropriated to the local governments road fund. The department shall maintain an accounting of the fees collected and shall report that amount upon request to the legislature.

New Mexico Statutes

§ 66-5-35 - Limited driving privilege upon suspension or revocation.

A. Upon suspension or revocation of a person's driving privilege or driver's license following conviction or adjudication as a delinquent under any law, ordinance or rule relating to motor vehicles, the person may apply to the department for a driver's license, provisional license or instruction permit to drive, limited to use allowing the person to engage in gainful employment, to attend school or to attend a court-ordered treatment program, except that the person shall not be eligible to apply:

- (1) for a limited commercial driver's license or an ignition interlock license in lieu of a revoked or suspended commercial driver's license;

² Justia US State Law. <https://law.justia.com>

- (2) for a limited license when the person's driver's license was revoked pursuant to the provisions of the Implied Consent Act [66-8-105 through 66-8-112 NMSA 1978], except as provided in the Ignition Interlock Licensing Act [66-5-501 to 66-5-504 NMSA 1978];
- (3) for a limited license when the person's driver's license was revoked pursuant to the provisions of Section 66-8-102 NMSA 1978, except as provided in the Ignition Interlock Licensing Act;
- (4) for a limited license when the person's driver's license is denied pursuant to the provisions of Subsection D of Section 66-5-5 NMSA 1978, except as provided in the Ignition Interlock Licensing Act; or
- (5) for a limited license when the person's driver's license was revoked pursuant to a conviction for committing homicide by vehicle, great bodily harm by vehicle, or homicide by vehicle or great bodily harm by vehicle while under the influence of intoxicating liquor or drugs, as provided in Section 66-8-101 NMSA 1978, except as provided in the Ignition Interlock Licensing Act.

B. Upon receipt of a fully completed application that complies with statutes and rules for a limited license or an ignition interlock license and payment of the fee specified in this subsection, the department shall issue a limited license, ignition interlock license or permit to the applicant showing the limitations specified in the approved application. For each limited license, ignition interlock license or permit to drive, the applicant shall pay to the department a fee of forty-five dollars (\$45.00), which shall be transferred to the department of transportation. All money collected under this subsection shall be used for DWI prevention and education programs for elementary and secondary school students. The department of transportation shall coordinate with the department of health to ensure that there is no program duplication. The limited license or permit to drive may be suspended as provided in Section 66-5-30 NMSA 1978.

New Mexico Statutes
§ 66-5-502. Definitions.

As used in the Ignition Interlock Licensing Act:

- A. "denied" means the division has refused to issue an instruction permit, driver's license or provisional license pursuant to the provisions of Subsection D or E of Section 66-5-5 NMSA 1978;
- B. "ignition interlock device" means a device, approved by the traffic safety bureau, that prevents the operation of a motor vehicle by an intoxicated or impaired person;
- C. "ignition interlock license" means a driver's license issued to a person by the division that allows that person to operate a motor vehicle with an ignition interlock device after that person's driving privilege or driver's license has been revoked or denied. The division shall clearly mark an ignition interlock license to distinguish it from other driver's licenses; and
- D. "revoked" means the division, pursuant to the provisions of Section 66-5-29 or 66-8-111 NMSA 1978, has terminated a person's driving privilege or driver's license for:
 - (1) driving while under the influence of intoxicating liquor or drugs; or
 - (2) a conviction of homicide by vehicle or great bodily harm by vehicle while under the influence of intoxicating liquor or drugs.

New Mexico Statutes

§ 66-5-503. Ignitions interlock license; requirements.

A. A person whose driving privilege or driver's license has been revoked or denied or who has not met the ignition interlock license requirement as a condition of reinstatement pursuant to Section 66-5-33.1 NMSA 1978 may apply for an ignition interlock license from the division.

B. An applicant for an ignition interlock license shall:

(1) provide proof of installation of the ignition interlock device by a traffic safety bureau-approved ignition interlock installer on any vehicle the applicant drives; and

(2) sign an affidavit acknowledging that:

(a) operation by the applicant of any vehicle that is not equipped with an ignition interlock device is subject to penalties for driving with a revoked license;

(b) tampering or interfering with the proper and intended operation of an ignition interlock device may subject the applicant to penalties for driving with a license that was revoked for driving under the influence of intoxicating liquor or drugs or a violation of the Implied Consent Act [66-8-105 through 66-8-112 NMSA 1978]; and

(c) the applicant shall maintain the ignition interlock device and keep up-to-date records in the motor vehicle showing required service and calibrations and be able to provide the records upon request.

C. A person who has been convicted of homicide by vehicle or great bodily harm by vehicle while under the influence of intoxicating liquor or drugs, as provided in Section 66-8-101 NMSA 1978, shall not be issued an ignition interlock license unless the person has completed serving the sentence for that crime, including any period of probation and parole.

New Mexico Statutes

§ 66-5-504. Penalties.

A. A person who is issued an ignition interlock license and operates a vehicle that is not equipped with an ignition interlock device is driving with a license that was revoked for driving under the influence of intoxicating liquor or drugs or a violation of the Implied Consent Act [66-8-105 NMSA 1978] and may be subject to the penalties provided in Section 66-5-39 NMSA 1978.

B. A person who is issued an ignition interlock license and who knowingly and deliberately tampers or interferes or causes another to tamper or interfere with the proper and intended operation of an ignition interlock device may be subject to the penalties for driving with a license that was revoked for driving under the influence of intoxicating liquor or drugs or a violation of the Implied Consent Act as provided in Section 66-5-39 NMSA 1978.

New Mexico Statutes

§ 66-8-102. Persons under the influence of intoxicating liquor or drugs; aggravated driving while under the influence of intoxicating liquor or drugs; penalty.

A. It is unlawful for a person who is under the influence of intoxicating liquor to drive a vehicle within this state.

B. It is unlawful for a person who is under the influence of any drug to a degree that renders him incapable of safely driving a vehicle to drive a vehicle within this state.

C. It is unlawful for:

(1) a person who has an alcohol concentration of eight one hundredths or more in his blood or breath to drive a vehicle within this state; or

(2) a person who has an alcohol concentration of four one hundredths or more in his blood or breath to drive a commercial motor vehicle within this state.

D. Aggravated driving while under the influence of intoxicating liquor or drugs consists of a person who:

(1) has an alcohol concentration of sixteen one hundredths or more in his blood or breath while driving a vehicle within this state;

(2) has caused bodily injury to a human being as a result of the unlawful operation of a motor vehicle while driving under the influence of intoxicating liquor or drugs; or

(3) refused to submit to chemical testing, as provided for in the Implied Consent Act, and in the judgment of the court, based upon evidence of intoxication presented to the court, was under the influence of intoxicating liquor or drugs.

E. A person under first conviction pursuant to this section shall be punished, notwithstanding the provisions of Section 31-18-13 NMSA 1978, by imprisonment for not more than ninety days or by a fine of not more than five hundred dollars (\$500), or both; provided that if the sentence is suspended in whole or in part or deferred, the period of probation may extend beyond ninety days but shall not exceed one year. Upon a first conviction pursuant to this section, an offender shall be sentenced to not less than twenty-four hours and not more than forty-eight hours of community service. In addition, the offender may be required to pay a fine of three hundred dollars (\$300). The offender shall be ordered by the court to participate in and complete a screening program described in Subsection K of this section and to attend a driver rehabilitation program for alcohol or drugs, also known as a "DWI school", approved by the bureau and also may be required to participate in other rehabilitative services as the court shall determine to be necessary. In addition to those penalties, when an offender commits aggravated driving while under the influence of intoxicating liquor or drugs, the offender shall be sentenced to not less than forty-eight consecutive hours in jail. If an offender fails to complete, within a time specified by the court, any community service, screening program, treatment program or DWI school ordered by the court or fails to comply with any other condition of probation, the offender shall be sentenced to not less than an additional forty-eight consecutive hours in jail. Any jail sentence imposed pursuant to this subsection for failure to complete, within a time specified by the court, any community service, screening program, treatment program or DWI school ordered by the court or for aggravated driving while under the influence of intoxicating liquor or drugs shall not be suspended, deferred or taken under advisement. On a first conviction pursuant to this section, any time spent in jail

for the offense prior to the conviction for that offense shall be credited to any term of imprisonment fixed by the court. A deferred sentence pursuant to this subsection shall be considered a first conviction for the purpose of determining subsequent convictions.

F. A second or third conviction pursuant to this section shall be punished, notwithstanding the provisions of Section 31-18-13 NMSA 1978, by imprisonment for not more than three hundred sixty-four days or by a fine of not more than one thousand dollars (\$1,000), or both; provided that if the sentence is suspended in whole or in part, the period of probation may extend beyond one year but shall not exceed five years. Notwithstanding any provision of law to the contrary for suspension or deferment of execution of a sentence:

(1) upon a second conviction, an offender shall be sentenced to a jail term of not less than ninety-six consecutive hours, forty-eight hours of community service and a fine of five hundred dollars (\$500). In addition to those penalties, when an offender commits aggravated driving while under the influence of intoxicating liquor or drugs, the offender shall be sentenced to a jail term of not less than ninety-six consecutive hours. If an offender fails to complete, within a time specified by the court, any community service, screening program or treatment program ordered by the court, the offender shall be sentenced to not less than an additional seven consecutive days in jail. A penalty imposed pursuant to this paragraph shall not be suspended or deferred or taken under advisement; and

(2) upon a third conviction, an offender shall be sentenced to a jail term of not less than thirty consecutive days, ninety-six hours of community service and a fine of seven hundred fifty dollars (\$750). In addition to those penalties, when an offender commits aggravated driving while under the influence of intoxicating liquor or drugs, the offender shall be sentenced to a jail term of not less than sixty consecutive days. If an offender fails to complete, within a time specified by the court, any community service, screening program or treatment program ordered by the court, the offender shall be sentenced to not less than an additional sixty consecutive days in jail. A penalty imposed pursuant to this paragraph shall not be suspended or deferred or taken under advisement.

G. Upon a fourth conviction pursuant to this section, an offender is guilty of a fourth-degree felony and, notwithstanding the provisions of Section 31-18-15 NMSA 1978, shall be sentenced to a term of imprisonment of eighteen months, six months of which shall not be suspended, deferred or taken under advisement.

H. Upon a fifth conviction pursuant to this section, an offender is guilty of a fourth-degree felony and, notwithstanding the provisions of Section 31-18-15 NMSA 1978, shall be sentenced to a term of imprisonment of two years, one year of which shall not be suspended, deferred or taken under advisement.

I. Upon a sixth conviction pursuant to this section, an offender is guilty of a third-degree felony and, notwithstanding the provisions of Section 31-18-15 NMSA 1978, shall be sentenced to a term of imprisonment of thirty months, eighteen months of which shall not be suspended, deferred or taken under advisement.

J. Upon a seventh or subsequent conviction pursuant to this section, an offender is guilty of a third-degree felony and, notwithstanding the provisions of Section 31-18-15 NMSA 1978, shall be sentenced to a term of imprisonment of three years, two years of which shall not be suspended, deferred or taken under advisement.

K. Upon any conviction pursuant to this section, an offender shall be required to participate in and complete, within a time specified by the court, an alcohol or drug abuse screening program approved by the department of finance and administration and, if necessary, a treatment program approved by the court. The requirement imposed pursuant to this subsection shall not be suspended, deferred or taken under advisement.

L. Upon a second or third conviction pursuant to this section, an offender shall be required to participate in and complete, within a time specified by the court:

- (1) not less than a twenty-eight-day inpatient, residential or in-custody substance abuse treatment program approved by the court;
- (2) not less than a ninety-day outpatient treatment program approved by the court;
- (3) a drug court program approved by the court; or
- (4) any other substance abuse treatment program approved by the court.

The requirement imposed pursuant to this subsection shall not be suspended, deferred or taken under advisement.

M. Upon a felony conviction pursuant to this section, the corrections department shall provide substance abuse counseling and treatment to the offender in its custody. While the offender is on probation or parole under its supervision, the corrections department shall also provide substance abuse counseling and treatment to the offender or shall require the offender to obtain substance abuse counseling and treatment.

N. Upon a conviction pursuant to this section, an offender shall be required to obtain an ignition interlock license and have an ignition interlock device installed and operating on all motor vehicles driven by the offender, pursuant to rules adopted by the bureau. Unless determined by the sentencing court to be indigent, the offender shall pay all costs associated with having an ignition interlock device installed on the appropriate motor vehicles. The offender shall operate only those vehicles equipped with ignition interlock devices for:

- (1) a period of one year, for a first offender;
- (2) a period of two years, for a second conviction pursuant to this section;
- (3) a period of three years, for a third conviction pursuant to this section; or
- (4) the remainder of the offender's life, for a fourth or subsequent conviction pursuant to this section.

O. Five years from the date of conviction and every five years thereafter, a fourth or subsequent offender may apply to a district court for removal of the ignition interlock device requirement provided in this section and for restoration of a driver's license. A district court may, for good cause shown, remove the ignition interlock device requirement and order restoration of the license; provided that the offender has not been subsequently convicted of driving a motor vehicle while under the influence of

intoxicating liquor or drugs. Good cause may include an alcohol screening and proof from the interlock vendor that the person has not had violations of the interlock device.

P. In the case of a first, second or third offense under this section, the magistrate court has concurrent jurisdiction with district courts to try the offender.

Q. A conviction pursuant to a municipal or county ordinance in New Mexico or a law of any other jurisdiction, territory or possession of the United States or of a tribe, when that ordinance or law is equivalent to New Mexico law for driving while under the influence of intoxicating liquor or drugs, and prescribes penalties for driving while under the influence of intoxicating liquor or drugs, shall be deemed to be a conviction pursuant to this section for purposes of determining whether a conviction is a second or subsequent conviction.

R. In addition to any other fine or fee that may be imposed pursuant to the conviction or other disposition of the offense under this section, the court may order the offender to pay the costs of any court-ordered screening and treatment programs.

S. With respect to this section and notwithstanding any provision of law to the contrary, if an offender's sentence was suspended or deferred in whole or in part and the offender violates any condition of probation, the court may impose any sentence that the court could have originally imposed and credit shall not be given for time served by the offender on probation.

T. As used in this section:

(1) "bodily injury" means an injury to a person that is not likely to cause death or great bodily harm to the person, but does cause painful temporary disfigurement or temporary loss or impairment of the functions of any member or organ of the person's body;

(2) "commercial motor vehicle" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

(a) has a gross combination weight rating of more than twenty-six thousand pounds inclusive of a towed unit with a gross vehicle weight rating of more than ten thousand pounds;

(b) has a gross vehicle weight rating of more than twenty-six thousand pounds;

(c) is designed to transport sixteen or more passengers, including the driver; or

(d) is of any size and is used in the transportation of hazardous materials, which requires the motor vehicle to be placarded under applicable law; and

(3) "conviction" means an adjudication of guilt and does not include imposition of a sentence.

Texas

Applicable Statutes

Penal Code § 49.09 (h)

Code of Criminal Procedure, Chapter 17.441

Code of Criminal Procedure, § 42A.408
Transportation Code, § 521.242
Transportation Code, § 521.246
Transportation Code, § 521.2465
Transportation Code, § 521.247
Transportation Code, § 521.2475
Transportation Code, § 521.2476
Transportation Code, § 521.342 (b)

Full Text³

Texas Penal Code

§ 49.09 (h) Enhanced Offenses and Penalties.

(h) This subsection applies only to a person convicted of a second or subsequent offense relating to the operating of a motor vehicle while intoxicated committed within five years of the date on which the most recent preceding offense was committed. The court shall enter an order that requires the defendant to have a device installed, on each motor vehicle owned or operated by the defendant, that uses a deep-lung breath analysis mechanism to make impractical the operation of the motor vehicle if ethyl alcohol is detected in the breath of the operator, and that requires that before the first anniversary of the ending date of the period of license suspension under Section 521.344, Transportation Code, the defendant not operate any motor vehicle that is not equipped with that device. The court shall require the defendant to obtain the device at the defendant's own cost on or before that ending date, require the defendant to provide evidence to the court on or before that ending date that the device has been installed on each appropriate vehicle, and order the device to remain installed on each vehicle until the first anniversary of that ending date. If the court determines the offender is unable to pay for the device, the court may impose a reasonable payment schedule not to extend beyond the first anniversary of the date of installation. The Department of Public Safety shall approve devices for use under this subsection. Section 521.247, Transportation Code, applies to the approval of a device under this subsection and the consequences of that approval. Failure to comply with an order entered under this subsection is punishable by contempt. For the purpose of enforcing this subsection, the court that enters an order under this subsection retains jurisdiction over the defendant until the date on which the device is no longer required to remain installed. To the extent of a conflict between this subsection and Article 42A.408 Section 13(i), Article 42.12, [FN3] Code of Criminal Procedure, this subsection controls.

Texas Code of Criminal Procedure

Chapter 17.441 Conditions requiring motor vehicle ignition interlock.

(a) Except as provided by Subsection (b), a magistrate shall require on release that a defendant charged with a subsequent offense under Sections 49.04 - 49.06, Penal Code, or an offense under Section 49.07 or 49.08 of that code:

³ Justia US State Law. <https://law.justia.com>

(1) have installed on the motor vehicle owned by the defendant or on the vehicle most regularly driven by the defendant, a device that uses a deep-lung breath analysis mechanism to make impractical the operation of a motor vehicle if ethyl alcohol is detected in the breath of the operator; and

(2) not operate any motor vehicle unless the vehicle is equipped with that device.

(b) The magistrate may not require the installation of the device if the magistrate finds that to require the device would not be in the best interest of justice.

(c) If the defendant is required to have the device installed, the magistrate shall require that the defendant have the device installed on the appropriate motor vehicle, at the defendant's expense, before the 30th day after the date the defendant is released on bond.

(d) The magistrate may designate an appropriate agency to verify the installation of the device and to monitor the device. If the magistrate designates an agency under this subsection, in each month during which the agency verifies the installation of the device or provides a monitoring service the defendant shall pay a fee to the designated agency in the amount set by the magistrate. The defendant shall pay the initial fee at the time the agency verifies the installation of the device. In each subsequent month during which the defendant is required to pay a fee the defendant shall pay the fee on the first occasion in that month that the agency provides a monitoring service. The magistrate shall set the fee in an amount not to exceed \$10 as determined by the county auditor, or by the commissioners court of the county if the county does not have a county auditor, to be sufficient to cover the cost incurred by the designated agency in conducting the verification or providing the monitoring service, as applicable in that county.

Texas Code of Criminal Procedure
§ 42A.408 Use of Ignition Interlock Device.

(a) In this article, "ignition interlock device" means a device that uses a deep-lung breath analysis mechanism to make impractical the operation of the motor vehicle if ethyl alcohol is detected in the breath of the operator.

(b) The court may require as a condition of community supervision that a defendant placed on community supervision after conviction of an offense under Sections 49.04 - 49.08, Penal Code , have an ignition interlock device installed on the motor vehicle owned by the defendant or on the vehicle most regularly driven by the defendant and that the defendant not operate any motor vehicle that is not equipped with that device.

(c) The court shall require as a condition of community supervision that a defendant described by Subsection (b) have an ignition interlock device installed on the motor vehicle owned by the defendant or on the vehicle most regularly driven by the defendant and that the defendant not operate any motor vehicle unless the vehicle is equipped with that device if:

(1) it is shown on the trial of the offense that an analysis of a specimen of the defendant's blood, breath, or urine showed an alcohol concentration level of 0.15 or more at the time the analysis was performed;

(2) the defendant is placed on community supervision after conviction of an offense under Sections 49.04 - 49.06, Penal Code, for which the defendant is punished under Section 49.09(a) or (b), Penal Code; or

(3) the court determines under Subsection (d) that the defendant has one or more previous convictions under Sections 49.04 - 49.08, Penal Code.

(d) Before placing on community supervision, a defendant convicted of an offense under Sections 49.04 - 49.08, Penal Code, the court shall determine from criminal history record information maintained by the Department of Public Safety whether the defendant has one or more previous convictions under any of those sections. A previous conviction may not be used for purposes of restricting a defendant to the operation of a motor vehicle equipped with an ignition interlock device under Subsection (c) if:

(1) the previous conviction was a final conviction under Section 49.04, 49.045, 49.05, 49.06, 49.07, or 49.08, Penal Code, and was for an offense committed before the beginning of the 10-year period preceding the date of the instant offense for which the defendant was convicted and placed on community supervision; and

(2) the defendant has not been convicted of an offense under Section 49.04, 49.045, 49.05, 49.06, 49.07, or 49.08, Penal Code, committed within the 10-year period preceding the date of the instant offense for which the defendant was convicted and placed on community supervision.

(e) Notwithstanding any other provision of this subchapter or other law, a judge who places on community supervision a defendant who was younger than 21 years of age at the time of the offense and was convicted for an offense under Sections 49.04 - 49.08, Penal Code, shall require as a condition of community supervision that the defendant not operate any motor vehicle unless the vehicle is equipped with an ignition interlock device.

(f) The court shall require the defendant to obtain an ignition interlock device at the defendant's own cost before the 30th day after the date of conviction unless the court finds that to do so would not be in the best interest of justice and enters its findings on record. The court shall require the defendant to provide evidence to the court within the 30-day period that the device has been installed on the appropriate vehicle and order the device to remain installed on that vehicle for a period the length of which is not less than 50 percent of the supervision period. If the court determines the defendant is unable to pay for the ignition interlock device, the court may impose a reasonable payment schedule not to exceed twice the length of the period of the court's order.

(g) The Department of Public Safety shall approve ignition interlock devices for use under this article. Section 521.247, Transportation Code, applies to the approval of a device under this article and the consequences of that approval.

(h) Notwithstanding any other provision of this subchapter, if a defendant is required to operate a motor vehicle in the course and scope of the defendant's employment and if the vehicle is owned by the employer, the defendant may operate that vehicle without installation of an approved ignition interlock device if the employer has been notified of that driving privilege restriction and if proof of that notification is with the vehicle. The employment exemption does not apply if the business entity that owns the vehicle is owned or controlled by the defendant.

Texas Transportation Code
§ 521.242 Petition.

(a) A person whose license has been suspended for a cause other than a physical or mental disability or impairment or a conviction of an offense under Sections 49.04 - 49.08 Section 49.04, Penal Code, may apply for an occupational license by filing a verified petition with the clerk of a justice, county, or district court with jurisdiction that includes the precinct or county in which:

- (1) the person resides; or
- (2) the offense occurred for which the license was suspended.

(b) A person may apply for an occupational license by filing a verified petition only with the clerk of the court in which the person was convicted if:

- (1) the person's license has been automatically suspended or canceled under this chapter for a conviction of an offense under the laws of this state; and
- (2) the person has not been issued, in the 10 years preceding the date of the filing of the petition, more than one occupational license after a conviction under the laws of this state.

(c) A petition filed under this section must set forth in detail the person's essential need.

(d) A petition filed under Subsection (b) must state that the petitioner was convicted in that court for an offense under the laws of this state.

(e) The clerk of the court shall file the petition as in any other matter.

(f) A court may not grant an occupational license for the operation of a commercial motor vehicle to which Chapter 522 applies.

Texas Transportation Code
§ 521.246 Ignition Interlock Requirement.

(a) If the person's license has been suspended after a conviction of an offense under Sections 49.04 - 49.08 49.08, Penal Code, the judge shall restrict the person to the operation of a motor vehicle equipped with an ignition interlock device.

(b) Redesignated in part into subsec. (a) and deleted in part by Acts 2015, 84th Leg., ch. 1067 (H.B. 2246), § 6.

(c) The person shall obtain the ignition interlock device at the person's own expense unless the court finds that to do so is not in the best interest of justice and enters that finding in the record. If the court determines that the person is unable to pay for the device, the court may impose a reasonable payment schedule for a term not to exceed twice the period of the court's order.

(d) The court shall order the ignition interlock device to remain installed for the duration of the period of suspension.

(e) A person to whom this section applies may operate a motor vehicle without the installation of an approved ignition interlock device if:

- (1) the person is required to operate a motor vehicle in the course and scope of the person's employment;
- (2) the vehicle is owned by the person's employer;
- (3) the employer is not owned or controlled by the person whose driving privilege is restricted;
- (4) the employer is notified of the driving privilege restriction; and
- (5) proof of that notification is with the vehicle.

(f) A previous conviction may not be used for purposes of restricting a person to the operation of a motor vehicle equipped with an interlock ignition device under this section if:

- (1) the previous conviction was a final conviction for an offense under Sections 49.04 - 49.08 49.08, Penal Code, and was for an offense committed more than 10 years before the instant offense for which the person was convicted; and
- (2) the person has not been convicted of an offense under Sections 49.04-49.08 of that code committed within 10 years before the date on which the instant offense for which the person was convicted.

**Texas Transportation Code
§ 521.2465 Restricted License.**

(a) On receipt of notice that a person has been restricted to the use of a motor vehicle equipped with an ignition interlock device, the department shall notify that person that the person's driver's license expires on the 30th day after the date of the notice. On application by the person and payment of a fee of \$10, the department shall issue a special restricted license that conspicuously indicates that the person is authorized to operate only a motor vehicle equipped with an ignition interlock device.

(b) On receipt of a copy of a court order removing the restriction or at the end of the period of suspension, as applicable, the department shall issue the person a driver's license without the restriction.

**Texas Transportation Code
§ 521.247 Approval of Ignition Interlock Devices.**

(a) The department shall adopt rules for the approval of ignition interlock devices used under this subchapter.

(b) The department by rule shall establish general standards for the calibration and maintenance of the devices. The manufacturer or an authorized representative of the manufacturer is responsible for calibrating and maintaining the device.

(c) If the department approves a device, the department shall notify the manufacturer of that approval in writing. Written notice from the department to a manufacturer is admissible in a civil or criminal proceeding in this state. The manufacturer shall reimburse the department for any cost incurred by the department in approving the device.

(d) The department is not liable in a civil or criminal proceeding that arises from the use of an approved device.

Texas Transportation Code

§ 521.2475 Ignition Interlock Device Evaluation.

(a) On January 1 of each year, the department shall issue an evaluation of each ignition interlock device approved under Section 521.247 using guidelines established by the National Highway Traffic Safety Administration, including:

- (1) whether the device provides accurate detection of alveolar air;
- (2) the moving retest abilities of the device;
- (3) the use of tamper-proof blood alcohol content level software by the device;
- (4) the anticircumvention design of the device;
- (5) the recalibration requirements of the device; and
- (6) the breath action required by the operator.

(b) The department shall assess the cost of preparing the evaluation equally against each manufacturer of an approved device.

Texas Transportation Code

§ 521.2476 Minimum Standards for Vendors of Ignition Interlock Devices.

(a) The department by rule shall establish:

- (1) minimum standards for vendors of ignition interlock devices who conduct business in this state; and
- (2) procedures to ensure compliance with those standards, including procedures for the inspection of a vendor's facilities.

(b) The minimum standards shall require each vendor to:

- (1) be authorized by the department to do business in this state;

- (2) install a device only if the device is approved under Section 521.247;
 - (3) obtain liability insurance providing coverage for damages arising out of the operation or use of devices in amounts and under the terms specified by the department;
 - (4) install the device and activate any anticircumvention feature of the device within a reasonable time after the vendor receives notice that installation is ordered by a court;
 - (5) install and inspect the device in accordance with any applicable court order;
 - (6) repair or replace a device not later than 48 hours after receiving notice of a complaint regarding the operation of the device;
 - (7) submit a written report of any violation of a court order to that court and to the person's supervising officer, if any, not later than 48 hours after the vendor discovers the violation;
 - (8) maintain a record of each action taken by the vendor with respect to each device installed by the vendor, including each action taken as a result of an attempt to circumvent the device, until at least the fifth anniversary after the date of installation;
 - (9) make a copy of the record available for inspection by or send a copy of the record to any court, supervising officer, or the department on request; and
 - (10) annually provide to the department a written report of each service and ignition interlock device feature made available by the vendor.
- (c) The department may revoke the department's authorization for a vendor to do business in this state if the vendor or an officer or employee of the vendor violates:
- (1) any law of this state that applies to the vendor; or
 - (2) any rule adopted by the department under this section or another law that applies to the vendor.
- (d) A vendor shall reimburse the department for the reasonable cost of conducting each inspection of the vendor's facilities under this section.
- (e) In this section, "offense relating to the operating of a motor vehicle while intoxicated" has the meaning assigned by Section 49.09, Penal Code.

Texas Transportation Code

§ 521.342 (b) Person Under 21 Years of Age.

- (b) The department shall suspend for one year the license of a person who is under 21 years of age and is convicted of an offense under Section 49.04 , 49.045 , 49.07 , or 49.08, Penal Code , regardless of whether the person is required to attend an educational program under Article 42A.403 Section 13(h), Article 42.12, Code of Criminal Procedure , that is designed to rehabilitate persons who have operated

motor vehicles while intoxicated, unless the person is placed under community supervision under Chapter 42A, Code of Criminal Procedure, and is required as a condition of the community supervision to not operate a motor vehicle unless the vehicle is equipped with the device described by Article 42A.408 of that chapter. If the person is required to attend such a program and does not complete the program before the end of the person's suspension, the department shall suspend the person's license or continue the suspension, as appropriate, until the department receives proof that the person has successfully completed the program. On the person's successful completion of the program, the person's instructor shall give notice to the department and to the community supervision and corrections department in the manner provided by Article 42A.406(b) (h), Article 42.12, Code of Criminal Procedure.

Washington

Applicable Statutes

§ 46.20.720

§ 46.20.740

§ 46.20.385

Full Text⁴

Washington Revised Code

46.20.720: Drivers convicted of alcohol offenses.

(1) The court may order that after a period of suspension, revocation, or denial of driving privileges, and for up to as long as the court has jurisdiction, any person convicted of any offense involving the use, consumption, or possession of alcohol while operating a motor vehicle may drive only a motor vehicle equipped with a functioning ignition interlock. The court shall establish a specific calibration setting at which the interlock will prevent the vehicle from being started. The court shall also establish the period of time for which interlock use will be required.

(2) The department shall require that, after any applicable period of suspension, revocation, or denial of driving privileges, a person may drive only a motor vehicle equipped with a functioning ignition interlock device if the person is convicted of an alcohol-related violation of RCW [46.61.502](#) or [46.61.504](#) or an equivalent local ordinance.

The department may waive the requirement for the use of such a device if it concludes that such devices are not reasonably available in the local area. The device is not necessary on vehicles owned by a person's employer and driven as a requirement of employment during working hours.

The ignition interlock device shall be calibrated to prevent the motor vehicle from being started when the breath sample provided has an alcohol concentration of 0.025 or more. The period of time of the restriction will be as follows:

⁴ Justia US State Law. <https://law.justia.com>

- (a) For a person who has not previously been restricted under this section, a period of one year;
- (b) For a person who has previously been restricted under (a) of this subsection, a period of five years;
- (c) For a person who has previously been restricted under (b) of this subsection, a period of ten years.

Washington Revised Code

46.20.740: Notation on driving record — Verification of interlock — Penalty.

(1) The department shall attach or imprint a notation on the driving record of any person restricted under RCW 46.20.720 stating that the person may operate only a motor vehicle equipped with a functioning ignition interlock device. The department shall determine the person's eligibility for licensing based upon written verification by a company doing business in the state that it has installed the required device on a vehicle owned or operated by the person seeking reinstatement. If, based upon notification from the interlock provider or otherwise, the department determines that an ignition interlock required under this section is no longer installed or functioning as required, the department shall suspend the person's license or privilege to drive. Whenever the license or driving privilege of any person is suspended or revoked as a result of non-compliance with an ignition interlock requirement, the suspension shall remain in effect until the person provides notice issued by a company doing business in the state that a vehicle owned or operated by the person is equipped with a functioning ignition interlock device.

(2) It is a misdemeanor for a person with such a notation on his or her driving record to operate a motor vehicle that is not so equipped.

Revised Code of Washington

46.20.385 Ignition interlock driver's license—Application—Eligibility—Cancellation—Costs—Rules.

(1)(a) Any person licensed under this chapter or who has a valid driver's license from another state, who is convicted of: (i) A violation of RCW 46.61.502 or 46.61.504 or an equivalent local or out-of-state statute or ordinance, or (ii) a violation of RCW 46.61.520(1)(a) or an equivalent local or out-of-state statute or ordinance, or (iii) a conviction for a violation of RCW 46.61.520(1) (b) or (c) if the conviction is the result of a charge that was originally filed as a violation of RCW 46.61.520(1)(a), or (iv) RCW 46.61.522(1)(b) or an equivalent local or out-of-state statute or ordinance, or (v) RCW 46.61.522(1) (a) or (c) if the conviction is the result of a charge that was originally filed as a violation of RCW 46.61.522(1)(b) committed while under the influence of intoxicating liquor or any drug, or (vi) who has had or will have his or her license suspended, revoked, or denied under RCW 46.20.3101, or who is otherwise permitted under subsection (8) of this section, may submit to the department an application for an ignition interlock driver's license. The department, upon receipt of the prescribed fee and upon determining that the petitioner is eligible to receive the license, may issue an ignition interlock driver's license.

(b) A person may apply for an ignition interlock driver's license anytime, including immediately after receiving the notices under RCW 46.20.308 or after his or her license is suspended, revoked, or denied.

(c) An applicant under this subsection shall provide proof to the satisfaction of the department that a functioning ignition interlock device has been installed on all vehicles operated by the person.

(i) The department shall require the person to maintain the device on all vehicles operated by the person and shall restrict the person to operating only vehicles equipped with the device, for the remainder of the period of suspension, revocation, or denial, unless otherwise permitted under RCW 46.20.720(6).

(ii) Subject to any periodic renewal requirements established by the department under this section and subject to any applicable compliance requirements under this chapter or other law, an ignition interlock driver's license granted upon a suspension or revocation under RCW 46.61.5055 or 46.20.3101 extends through the remaining portion of any concurrent or consecutive suspension or revocation that may be imposed as the result of administrative action and criminal conviction arising out of the same incident.

(2) An applicant for an ignition interlock driver's license who qualifies under subsection (1) of this section is eligible to receive a license only if the applicant files satisfactory proof of financial responsibility under chapter 46.29 RCW.

(3) Upon receipt of evidence that a holder of an ignition interlock driver's license granted under this subsection no longer has a functioning ignition interlock device installed on all vehicles operated by the driver, the director shall give written notice by first-class mail to the driver that the ignition interlock driver's license shall be canceled. If at any time before the cancellation goes into effect the driver submits evidence that a functioning ignition interlock device has been installed on all vehicles operated by the driver, the cancellation shall be stayed. If the cancellation becomes effective, the driver may obtain, at no additional charge, a new ignition interlock driver's license upon submittal of evidence that a functioning ignition interlock device has been installed on all vehicles operated by the driver.

(4) A person aggrieved by the decision of the department on the application for an ignition interlock driver's license may request a hearing as provided by rule of the department.

(5) The director shall cancel an ignition interlock driver's license after receiving notice that the holder thereof has been convicted of operating a motor vehicle in violation of its restrictions, no longer meets the eligibility requirements, or has been convicted of or found to have committed a separate offense or any other act or omission that under this chapter would warrant suspension or revocation of a regular driver's license. The department must give notice of the cancellation as provided under RCW 46.20.245. A person whose ignition interlock driver's license has been canceled under this section may reapply for a new ignition interlock driver's license if he or she is otherwise qualified under this section and pays the fee required under RCW 46.20.380.

(6)(a) Unless costs are waived by the ignition interlock company or the person is indigent under RCW 10.101.010, the applicant shall pay the cost of installing, removing, and leasing the ignition interlock device and shall pay an additional fee of twenty dollars per month. Payments shall be made directly to the ignition interlock company. The company shall remit the additional fee to the department, except that the company may retain twenty-five cents per month of the additional fee to cover the expenses associated with administering the fee.

(b) The department shall deposit the proceeds of the twenty dollar fee into the ignition interlock device revolving account. Expenditures from the account may be used only to administer and operate the ignition interlock device revolving account program. The department shall adopt rules to provide monetary assistance according to greatest need and when funds are available.

(7) The department shall adopt rules to implement ignition interlock licensing. The department shall consult with the administrative office of the courts, the state patrol, the Washington association of

sheriffs and police chiefs, ignition interlock companies, and any other organization or entity the department deems appropriate.

(8)(a) Any person licensed under this chapter who is convicted of a violation of RCW 46.61.500 when the charge was originally filed as a violation of RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, may submit to the department an application for an ignition interlock driver's license under this section.

(b) A person who does not have any driver's license under this chapter, but who would otherwise be eligible under this section to apply for an ignition interlock license, may submit to the department an application for an ignition interlock license. The department may require the person to take any driver's licensing examination under this chapter and may require the person to also apply and qualify for a temporary restricted driver's license under RCW 46.20.391.