

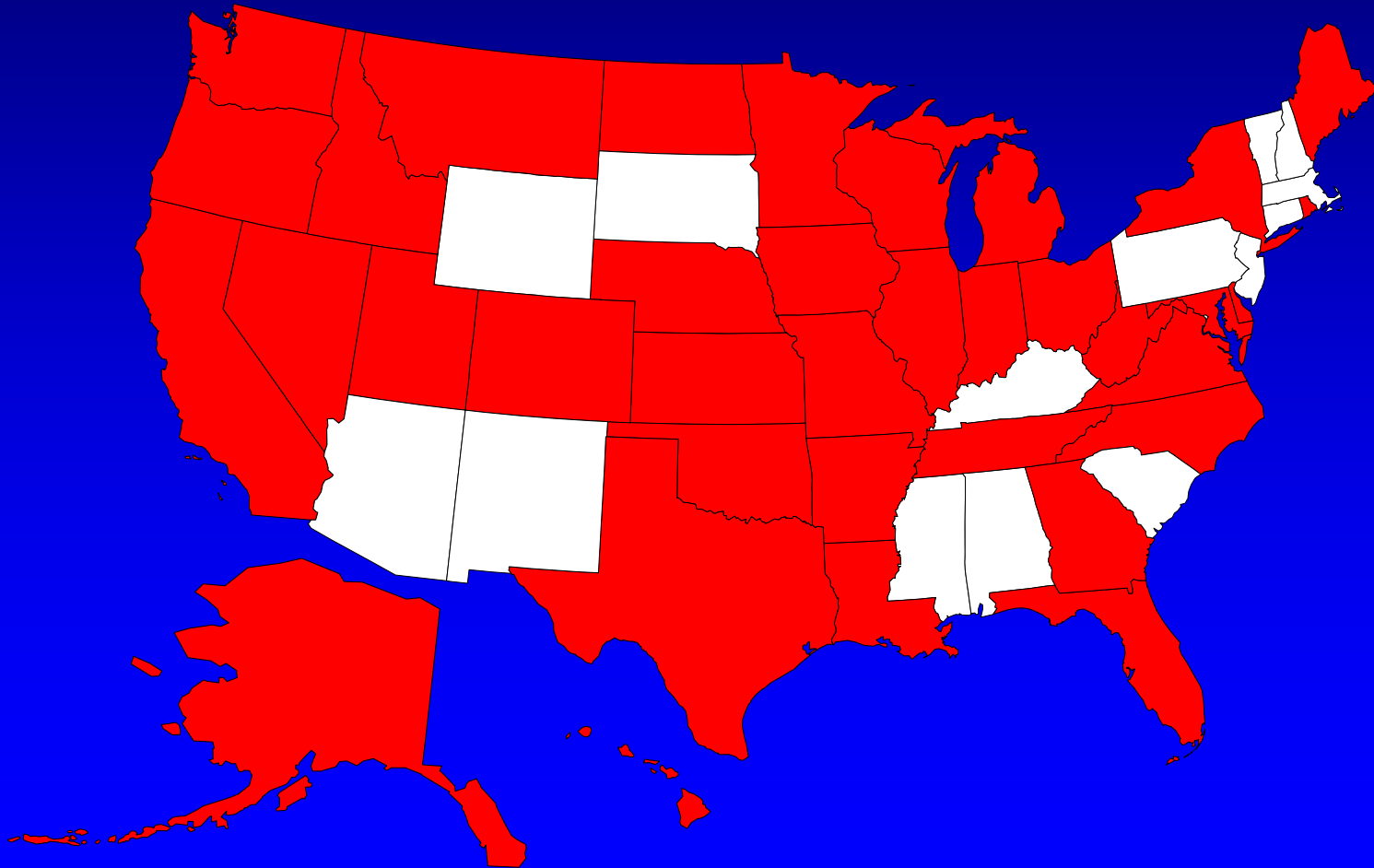
**Do Legal Barriers Favor an  
Administrative Ignition Interlock  
License Restriction Program or a  
Judicial Program?  
Legal Review Update**

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**7th Annual Ignition Interlock Symposium  
Vail, Colorado  
October 22-24, 2006**

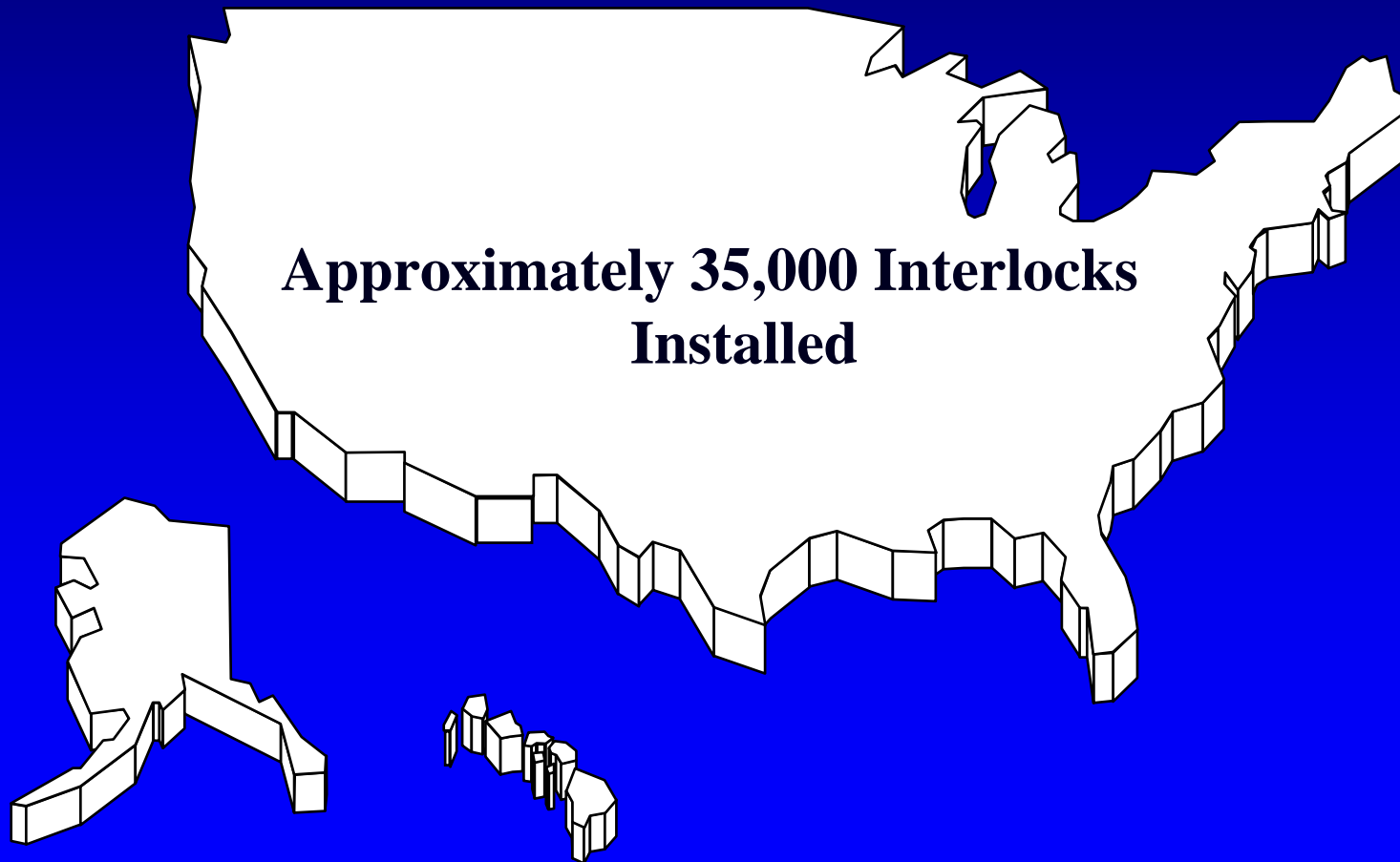


# 36 States Authorized Interlock Programs (1998)



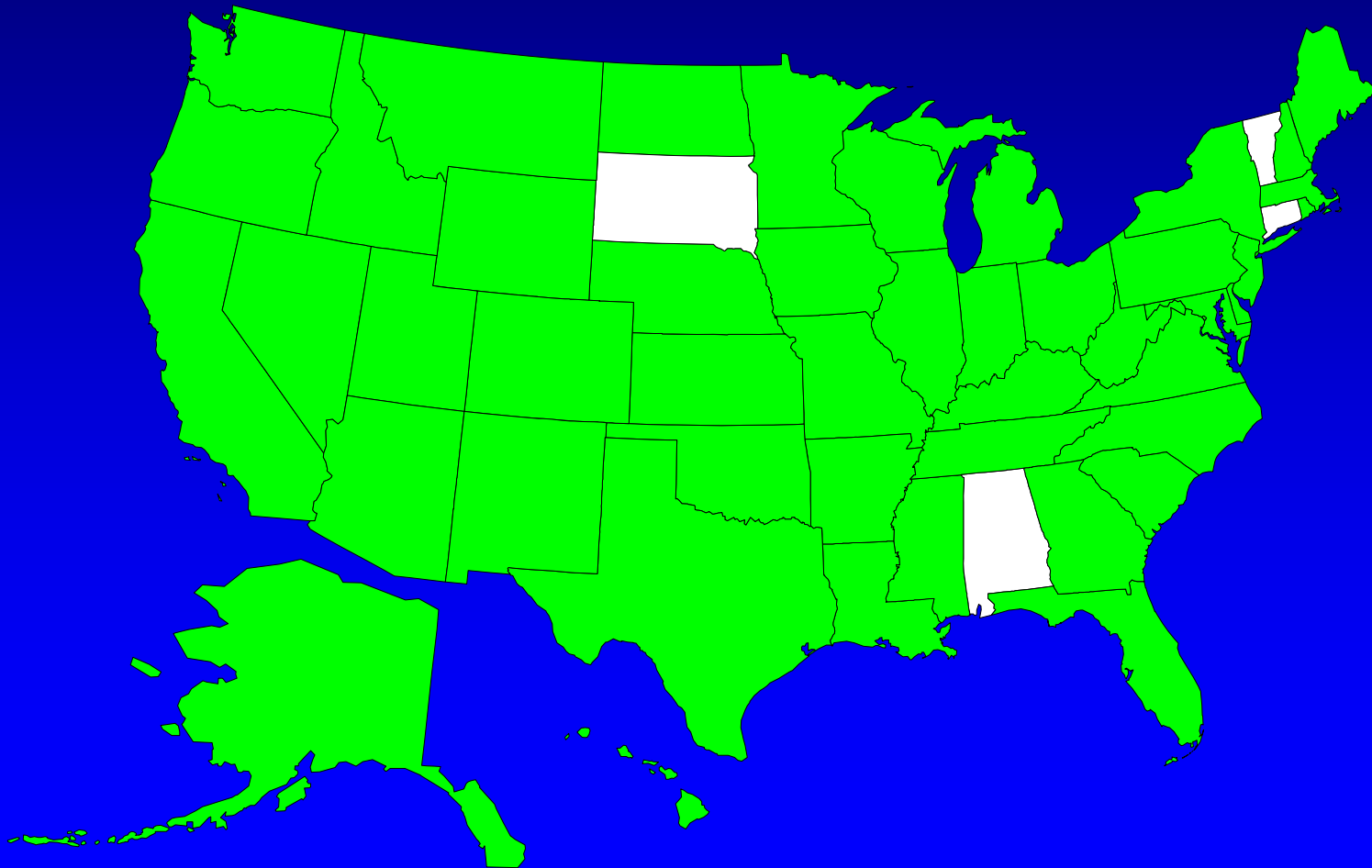


# Interlock Usage - 1998



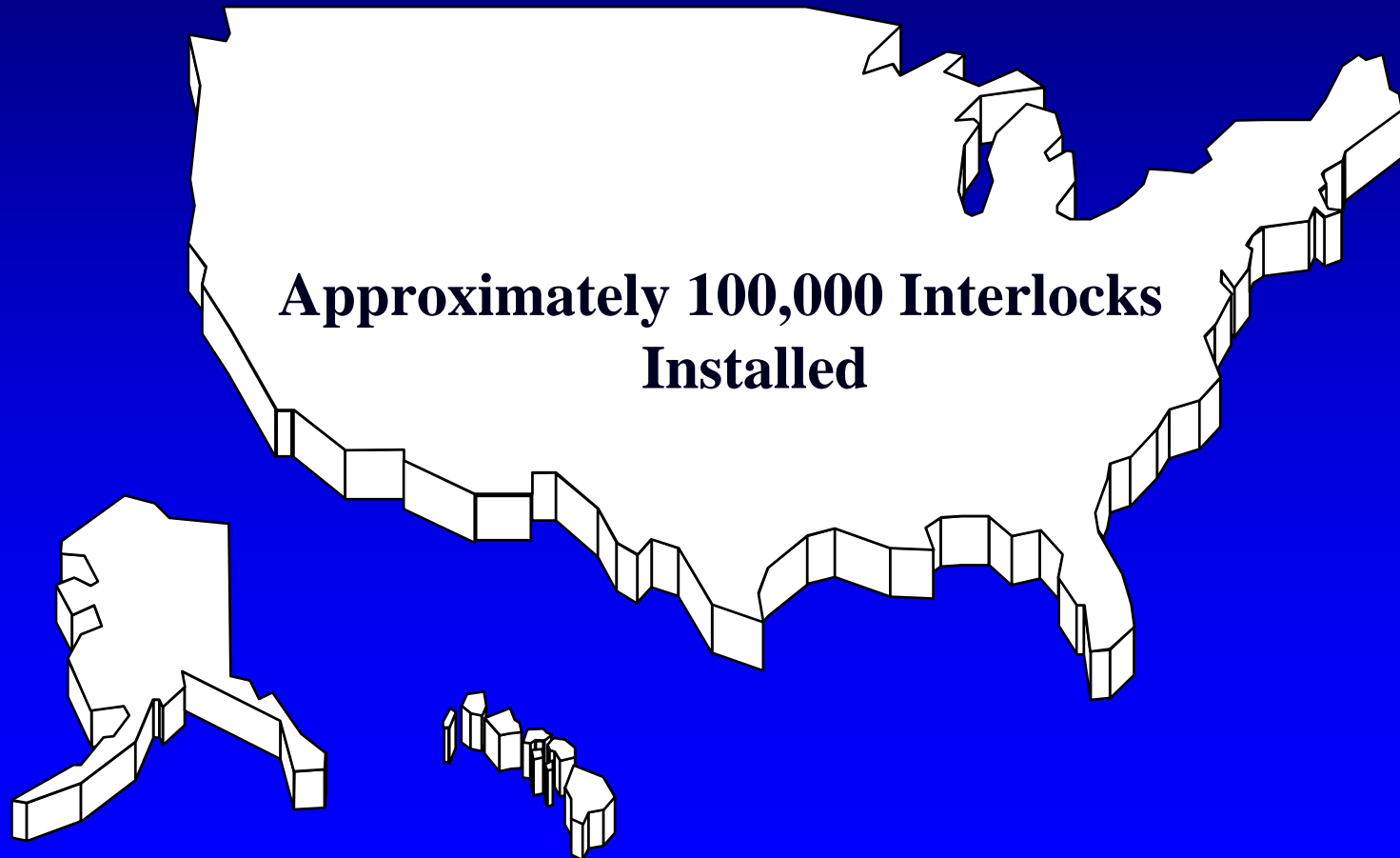


# 46 States and the District of Columbia Currently Authorize Interlock Programs



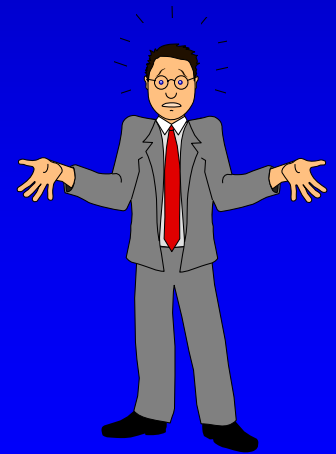
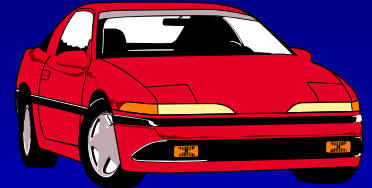


# Interlock Usage - 2006



# Ignition Interlock License Restriction Programs

- ◆ Promising Research
- ◆ Not all States have Laws Allowing Their Use
- ◆ Widespread Utilization of Interlocks has Not Materialized



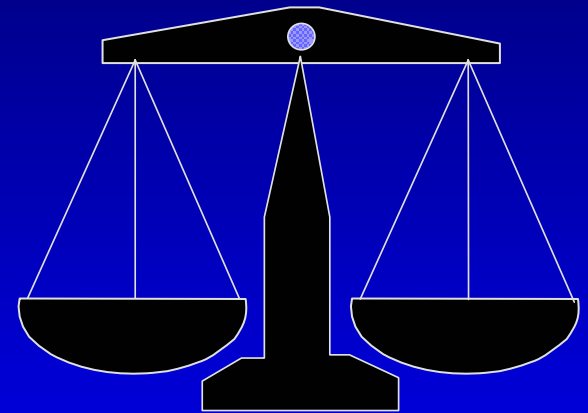


# Objectives

- ◆ Update 1998 and 2000 Legal Review
  - NIAAA, NHTSA
- ◆ Identify Potential Legal Constraints
- ◆ Administrative or Judicial Programs

# Potential Legal Constraints

- ◆ Federal Constitutional
- ◆ State Statutory
- ◆ Administrative Regulations
- ◆ Case Law



# 3 Branches of Government

◆ Legislative



◆ Executive



◆ Judicial





# Driver's License

- ◆ Issuance, Revocation or Encumbrance
  - Constitutionally Protected Interest
    - ✓ Driving Rights/Privileges at Stake
    - ✓ Due Process (Administratively, Criminally)
      - ❖ Type Depends on Facts & Circumstances of Each Case
  - Privilege – Not a Fundamental Right
    - ✓ Property Interest
  - Greater Right or Interest at Stake
    - ✓ Current Driver's License
    - ✓ Suspended/Revoked



# Due Process

## ◆ 5<sup>th</sup>, 6<sup>th</sup> and 14<sup>th</sup> Amendments to the U.S. Constitution

- Protects against arbitrary & unreasonable state actions and guarantees no person will be denied life, liberty or property without due process of law
- Challenges Based on Procedural or Substantive Due Process Grounds
- Procedural Due Process
  - ✓ Process, Trial or Hearing accorded defendant
  - ✓ Nature & sufficiency of the judicial or administrative proceeding that results in deprivation of protected interest (license revocation, suspension, encumbrance)



# Substantive Due Process

- ◆ State Action, Statute, or Administrative Rule Violates a Constitutional Guarantee
  - May Not be Arbitrary, Capricious, Discriminatory
  - Advances a Legitimate Government Interest
  - Reasonable Means of Advancing State Interest
- ◆ Driver's License Actions
  - Subject to Substantive Due Process
  - Any Statute or Administrative Rule Which Denies or Encumbers License - Rational Basis Test



# Rational Basis Test

- ◆ Does Not Involve “Suspect Class”
- ◆ Follows or Pursues a Valid Government Purpose
- ◆ Reasonable Means of Pursuing Government Interest
- ◆ Law Must Operate Equally on All Persons in Like Circumstances (“Equal Protection”)



# Driver's License Actions

## ◆ Judicial

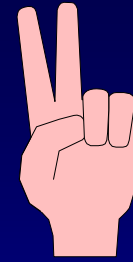
- Criminal Setting
- Greater Rights or Interest
- Greater Procedural Protections
- Individualized Sentencing

## ◆ Administrative

- Less Rights or Interest
- Less Procedural Protections



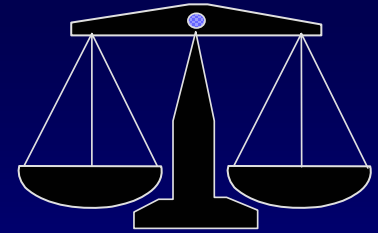
# Double Jeopardy



- ◆ Protects Individuals from Being Tried or Subjected to Multiple Punishments for the Same Offense
- ◆ Criminal and Civil Penalties Upheld
  - Civil Remedy Must Not Rise to Level of Criminal Punishment
- ◆ Interlock Ordered by Court - Criminal Sanction
- ◆ Ordered in Administrative Setting - Civil



# Equal Protection



- ◆ All Persons Similarly Situated (Class) Should be Treated Alike
  - Rationally Related to Legitimate State Purpose
  - Classification Related to Pursuing State Goals
- ◆ Is an interlock statute requiring an offender to install an interlock in all vehicles they own a violation of equal protection?
- ◆ Lebanon County v. Riggs, 53 Pa. D. & C.4th 309 (Ct. Com. Pl. 2001) (Rational Basis Test)
  - Legitimate State Interest (Highway Safety)
  - Statute Creates an Unequal Class (Those Drivers who Own a Vehicle as Opposed to Leasing or Borrowing)
  - Unconstitutional



# Equal Protection

- ◆ Does failing to allow an alcohol impaired driver with 2 DUS and 1 OWI conviction from obtaining an interlock restricted license create an unequal class when an offender with 3 DUS or 3 OWI may obtain an interlock restricted license?
- ◆ Iowa Dep't of Transp. v. Iowa Dist. Ct. for Pottawattamie County, 592 N.W.2d 41(1999)
- ◆ Habitual offenders do not have to be treated equally (Rational Basis Test)
- ◆ Constitutional



# Separation of Powers

- ◆ Is it a violation of separation of powers to require the judicial branch to conduct functions otherwise assigned to the executive branch (certifying installation and compliance of an interlock to the Department of Motor Vehicles)?
- ◆ Lebanon County v. Riggs, 53 Pa. D. & C.4th 309 (Ct. Com. Pl. 2001)
- ◆ Unconstitutional



# Taking of Property Without Compensation

- ◆ Does requiring an interlock restricted license as a condition of pretrial bond violate the constitution because it requires the driver to use private property (his own money) for public use without compensation?
- ◆ Thurman v. Dretke, No. Civ.A. 4:04-CV-0308A U.S. Dist., 2004 WL 2115366, at \*1 (N.D. Tex. Sep. 22, 2004) (not designated for publication)
- ◆ Conditions of probation within the sound discretion of the probation authority
- ◆ No abuse of discretion
- ◆ Constitutional



# Double Jeopardy

- ◆ When a judge does not order an interlock as required by statute and the state does not appeal or raise the issue in a timely fashion, does an administrative order for interlock violate double jeopardy?
- ◆ Doyon v. Dept. of Highway Safety and Motor Vehicles, 902 So.2d 842, 30 Fla. L. Weekly D1016 (Dist. Ct. App. 2005) reh'g denied, (2005)  
Defendant had completed his sentence before receiving the administrative order
- ◆ Constitutes Double Jeopardy
- ◆ Unconstitutional



# Double Jeopardy

- ◆ Does requiring a defendant to install an interlock as a condition of bail and subsequent loss of driving privileges for DWI constitute double jeopardy?
- ◆ Barring DWI prosecution
- ◆ Ex parte Sells, No. 01-99-00362-CR, 2000 Ct. App. Tex., 2000 WL 5060, at \*1 (Ct. App. Tex. Jan. 6, 2000) (not designated for publication)  
License revocation ruled by courts not punitive
- ◆ Follows that interlock (less severe infringement on the privilege of driving) does not constitute punishment
- ◆ Constitutional



# Ex Post Facto

- ◆ When an interlock law is passed after alcohol-impaired driving violations have occurred, can the number of alcohol violations prior to passage count toward the number needed to require an interlock restricted license?
- ◆ Ex parte Elliott, 950 S.W.2d 714, (Ct. App. Tex. 1997) reh'g overruled, 1997
- ◆ Newly passed legislation
  - “Criminal and Punitive” – Unconstitutional
  - “Remedial and Civil” – Constitutional
- ◆ Court ruled interlock is remedial (designed to protect the public interest) and not punitive
- ◆ Additional burden of interlock placed on defendant not relevant



# Abuse of Discretion

- ◆ Does a judge have discretion to order an interlock license restriction as a condition of bail on a 1<sup>st</sup> offender when the statute only applies to multiple offenders?
- ◆ Ex parte Sells, No. 01-99-00362-CR, 2000 Ct. App. Tex., 2000 WL 5060, at \*1 (Ct. App. Tex. Jan. 6, 2000) (not designated for publication)  
Statute mandating interlock for multiple offenders does not preclude its use for 1<sup>st</sup> offenders
- ◆ Conditions of bail do not have to ensure defendant's appearance in court
- ◆ But interlock does assist in ensuring presence in court because the defendant wants to come to court to have the device removed
- ◆ Not an abuse of discretion
- ◆ Constitutional



# Offenses Not Involving Alcohol

- ◆ Can interlock be mandated for offenses not related to alcohol-impaired driving?
- ◆ Defendant convicted for failure to drive within marked lanes
- ◆ Court ordered employment interlock conditional license
- ◆ State v. Foureman, 68 Ohio App. 3d 162, 587 N.E.2d 925 (12th Dist. Preble County 1990)
- ◆ Statute spelled out offenses authorizing interlock
- ◆ Failure to drive within marked lanes not a listed offense
- ◆ Overruled



# Optional or Mandatory

- ◆ Can interlock be optional in the discretion of the court if statute directs “mandatory?”
- ◆ Court did not order interlock
- ◆ State v. Villella, 266 Ga. App. 499, 597 S.E.2d 563 (2004)
- ◆ Statute previously read “...court may...” unless “...undue financial hardship...”
- ◆ Statute amended to “...court shall...”
- ◆ Court ruled “shall” meant “shall”
- ◆ Court has no discretion except for financial hardship



# Optional or Mandatory

- ◆ If statute directs the Department of Motor Vehicles to order interlock conditional license under certain conditions, can the defendant make an agreement with the prosecuting attorney that they not be subjected to the interlock requirements?
- ◆ Conrad v. State, 856A.2d 199, (Pa. 2004)
- ◆ Court ruled neither the court or the district attorney has the authority to negotiate the interlock requirement



# Ordered on All Vehicles

- ◆ Can interlock be ordered to be installed on all offender's vehicles?
- ◆ Conrad v. State, 856A.2d 199, (Pa. 2004) ...  
Others
- ◆ If statute reads "...to operate a motor vehicle only if it is equipped..."
- ◆ Department may not require that offender install device on own vehicle
- ◆ Defendant could lease, borrow, etc.
- ◆ May only drive interlock equipped vehicle



# Medical Exemption

- ◆ If statute mandates interlock under certain conditions, can the court order the Department of Motor Vehicles to exempt a driver for medical reasons?
- ◆ State v. Benbow, 169 N.C.App. 613, 610 S.E.2d 297 (2005)
- ◆ Court has jurisdiction to review
- ◆ Department not notified of hearing
- ◆ No right to appeal to court where suspension/conditional license mandatory



# Employer Owned Vehicles If Self-Employed

- ◆ Can interlock be ordered on employer owned vehicles if defendant is self-employed?
- ◆ Smith v. State, 89 P.3d 1062, 2004 OK 22 (2004)
- ◆ Defendant owned 50% of business
- ◆ State argued defendant self-employed and not an employee
- ◆ Court ruled statute focused on ownership of vehicles, not ownership of business
- ◆ Corporation owned vehicles
- ◆ Not subject to interlock



# Probable Cause for Arrest

- ◆ Does blowing into an interlock device and failure to start the vehicle provide sufficient probable cause for an officer to arrest a driver for DUI?
- ◆ City of Akron v. Kirby, 681 N.E.2d 444, 451 (Ohio App. 1996)
- ◆ Interlock connected to air compressor
- ◆ Driver asked to blow into interlock
- ◆ Vehicle would not start – Driver Arrested
- ◆ Upheld probable cause for DUI arrest



# Conclusion

## Courts Generally Favorable to Interlock Programs

- Remedial and Civil
- Not Punitive and Punishment
- Statutes Need to be Written Very Carefully
- ◆ Mixed Case Law
  - Separation of Powers
  - Mandatory vs. Judicial Discretion
- ◆ No Significant Legal Barriers
- ◆ Laws Apparently Favor Administrative Programs
  - Less Constitutional Burden in Administrative Setting
  - Statute Can Be Arbitrary to an Individual as Long as it Serves a Legitimate State Purpose

# Judicial Attitudes

A cartoon illustration of a judge with a grey wig and glasses, wearing a black robe and holding a wooden gavel. A speech bubble points to the word 'ALWAYS'.

**ALWAYS**

A cartoon illustration of a judge with a grey wig and glasses, wearing a black robe and holding a wooden gavel. A speech bubble points to the word 'NEVER'.

**NEVER**



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