

DO LEGAL BARRIERS FAVOR AN ADMINISTRATIVE IGNITION INTERLOCK LICENSE RESTRICTION PROGRAM OR A JUDICIAL PROGRAM? A LEGAL REVIEW UPDATE

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In 1998, 36 states authorized judicial and/or administrative ignition interlock programs and, according to a nationwide survey of ignition interlock vendors, approximately 35,000 ignition interlocks were installed in offenders' vehicles. By 2006, 46 states and the District of Columbia had authorized ignition interlock programs, and approximately 100,000 interlocks are currently installed. Although research on ignition interlock license restriction programs has been promising, not all states have laws allowing their use. Furthermore, widespread utilization of ignition interlocks has not materialized within the states that permit them. This paper updates two legal reviews from 1998 and 2000 conducted for the National Institute on Alcohol Abuse and Alcoholism and the National Highway Traffic Safety Administration. This legal review seeks to identify potential legal constraints, if any, to implementation of both administrative and judicial programs. We address this issue by reviewing Federal Constitutional law, state statutes, administrative regulations and case law.

The United States operates three independent and separate branches of government: the legislature, the executive and the judicial. The legislative branch, comprised of the Senate and House of Representatives, is responsible for writing the laws. The executive branch implements the laws created by the legislative branch by shaping policies and state statutes. The judicial branch determines whether or not the executive or legislative branches violate the Constitutional safeguards afforded all persons. The issuance, revocation or encumbrance of a driver's license is a constitutionally protected interest. Where constitutionally protected interests are at stake, due process must be followed. The type of due process is dependent on the facts, circumstances, and jurisdiction of each case. A driver's license is not a fundamental right, but it is a constitutionally protected property interest. There is a greater right or interest at stake for a driver's license that is currently valid than one that is suspended or revoked.

The 5th, 6th and 14th amendments to the United States Constitution address due process. Due process protects against arbitrary and unreasonable state actions and guarantees that no person will be denied life, liberty or property without due process of law. There are two types of due process, procedural and substantive. Procedural due process refers to the process, trial or hearing accorded the defendant. Specifically, it refers to the nature and sufficiency of the judicial or administrative proceeding that results in deprivation of a protected interest, such as license revocation, suspension and/or encumbrance. Substantive due process addresses state actions, statutes or administrative rules that violate a constitutional guarantee. Under substantive due process, state actions may not be arbitrary, capricious or discriminatory. Driver's license actions are subject to substantive due process, and any statute or administrative rule that denies or encumbers a driver's license must pass the rational basis test. The rational basis test is the lowest level of scrutiny applied by the judicial system. It mandates that statutes/laws and state actions do not involve or create "suspect classes" (e.g., racial classes). In reviewing state laws and statutes under the rational basis test, courts look at two issues: (1) whether the law or statute pursues or advances a legitimate government interest (e.g., highway safety) and (2) whether the means of advancing the state's interest is reasonable. In addition, the law or statute must be applied equally to all persons in like circumstances (i.e., equal protection).

Drivers' license actions are handled in both judicial and administrative settings. In a judicial/criminal setting, there are greater rights or interests at stake (e.g., freedom), greater procedural protections and individualized sentencing. Moreover, judicial discretion can be afforded to defendants based on the facts and circumstances of each case. In administrative settings, there are fewer rights or interests at stake (e.g., driving privilege), and therefore less stringent procedural protections.

Double jeopardy protects individuals from being tried or subjected to multiple punishments for the same offense. Criminal and civil penalties must be upheld, and a civil remedy must not rise to the level of criminal punishment. Interlocks ordered by a court are a criminal sanction while interlocks ordered in an administrative setting are a civil remedy.

Equal protection ensures that all people similarly situated (in a class) are treated alike. Under equal protection, criminal and civil sanctions must be rationally related to a legitimate state purpose, and any classification must be reasonably related to pursuing those goals. A plaintiff's challenge to ignition interlock under equal protection asked the court if "an interlock statute requiring an offender to install an interlock in all vehicles they own constitutes a violation of equal protection?" In this case in Pennsylvania [Lebanon County v. Riggs, 53 Pa. D. & C.4th 309 (Ct. Com. Pl. 2001)], a driver was convicted of a second or subsequent alcohol-impaired driving offense. The driver was required to install an ignition interlock on each vehicle he owned as a condition of relicensure after completing a one-year period of suspension in accordance with Act 63 (Pennsylvania's ignition interlock law). The driver argued that the interlock statute was unconstitutional and violated equal protection because it created an unequal class among drivers who own a vehicle and drivers who lease or borrow one. The court agreed that the interlock statute created an unequal class by treating drivers who own a vehicle (as opposed to leasing or borrowing a vehicle) differently. The interlock law was found to discriminate against persons who do not own a vehicle since they would not be able to drive a leased or borrowed vehicle even if it contained an interlock because installing an interlock on any vehicle not owned by the offender does not meet the pretext of the law. The court found that installation of an ignition interlock was a legitimate state interest for purposes of highway traffic safety but found no rational basis for the identified classes and therefore found the interlock law unconstitutional. Thus, the court found for the defendant and removed the interlock requirement from his license.

The question adjudicated in an Iowa case [Iowa Dep't of Transp. v. Iowa Dist. Ct. for Pottawattamie County, 592 N.W.2d 41(1999)] asked if "failing to allow an alcohol-impaired driver with 2 Driving Under Suspension (DUS) and 1 Operating While Intoxicated (OWI) convictions to obtain an interlock restricted license created an unequal class when an offender with 3 DUS or 3 OWI convictions may obtain an interlock restricted license?" The appellant applied for a temporary restricted driver's license after having been previously convicted of one instance of OWI and two instances of DUS within a 6-year period. State statute [321.215(2)] specifies that drivers who have been convicted of 3 DUSs may receive a temporary restricted license. An additional statute [321J.4(8)] specifies that persons who have 3 OWI convictions are eligible for a temporary restricted license given installation of an ignition interlock. Since the appellant had neither 3 DUSs nor 3 OWIs, the Department of Transportation determined that the appellant was not eligible for reinstatement with a restricted interlock license.

The court case sought to determine if treating drivers with any combination of 3 DUS/OWI violations differently from drivers with 3 DUSs or OWIs violated equal protection. The courts found that: (1) The law stipulates that drivers with 3 OWIs or 3 DUSs are eligible for an interlock restricted license, but the statute does not address the combination of such offenses; (2) It was reasonable for the Department of Transportation to deny a restricted license to the appellant because violating more than one criminal statute (DUS and OWI) may make the appellant more of a risk than if only one criminal statute were violated; and (3) The defendant did not have sufficient support for his argument that the statute lacked a rational basis. All factors considered, the court ruled that habitual offenders do not have to be

treated equally according to the rational basis test and, therefore, the decision to refuse the driver an interlock restricted license was constitutional.

Under the Constitution, each branch of government has separate and independent powers and may limit the power of other branches from encroaching on its area of domain. With regard to ignition interlocks, the legal question of interest has been “is it a violation of separation of powers to require the judicial branch to conduct functions otherwise assigned to the executive branch, in this case, assigning the function of certifying installation of and compliance with an interlock to the courts?” In the earlier Pennsylvania case [Lebanon County v. Riggs, 53 Pa. D. & C.4th 309 (Ct. Com. Pl. 2001)], the driver was required to install an ignition interlock on all vehicles he owned as a condition of relicensure after serving a one-year suspension for a conviction of a second or subsequent alcohol-impaired driving violation. The driver argued that the condition of relicensure was a violation of the separation of powers since the order for installing and certifying installation of the interlock came from the court and not the licensing agency. The Court of Common Pleas determined that the interlock law as imposed by the judiciary is unconstitutional because driver licensing and relicensing lies with the executive branch of government and not the judiciary. The court also ruled that Act 63 (requiring an ignition interlock for drivers convicted of alcohol-impaired driving) violates the separation of powers doctrine. According to Act 63, the court is responsible for both determining guilt (their stipulated role according to the state constitution) and verifying the installation of an ignition interlock (a role better suited for the executive branch). Using a rational basis test, the court determined that it is outside the scope of the judicial branch to perform a function of the executive branch and therefore ruled the interlock law, as written, unconstitutional.

The Takings Clause of the 5th amendment to the Constitution protects against the taking of property for public use without compensation. The question of interest for interlocks is “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?” A case in Texas, [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)] involved a driver, Thurman, who was stopped by police after being clocked as driving 81 miles per hour in a 60 miles per hour zone. The officer detected alcohol on Thurman’s breath and noticed an empty wine bottle and beer can in the vehicle. While out on bond, Thurman fled to Louisiana and was later returned to Texas for trial where he was sentenced to four years imprisonment for a conviction of felony DWI. Thurman challenged whether or not the conditions of probation (installation of an interlock) were within the sound discretion of the probation authority. He contended that requiring him to install an interlock using his private property (money) for the purposes of public safety, without compensation, was in violation of his rights under the Texas Constitution. However, his claims of constitutional-rights violations were not documented. The court ruled that the only issue that could be addressed was abuse of judicial discretion since the defendant did not document the constitutional rights that were presumably violated. The court found no abuse of discretion since the judge was in compliance with state law by mandating the interlock, and the interlock requirement is within reasonable realm of judicial discretion. Therefore the constitutionality of the sentence was upheld.

A challenge involving double jeopardy asked “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?” A case in Florida [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)] raised the issue of double jeopardy because the defendant had already completed his criminal sentence for conviction of a second DUI incident before the Department of Motor Vehicles had enforced an additional penalty (i.e., the interlock). At his conviction, Doyon had his license suspended for 12 months followed by 12 months of probation. Although an interlock should have been a condition of probation and ordered by the court, it was not. After Doyon completed his probation, the Department of Motor Vehicles informed him that he would be required to install an ignition interlock on any vehicles he

owned, operated or leased. Doyon appealed to the trial court, which refused to hear the case, and the Department of Motor Vehicles suspended Doyon's license for failure to install an interlock. The District Court ruled that the Department of Motor Vehicles cannot require an interlock simply because the court failed to do so, therefore, the sanction was judged unconstitutional because it placed the driver under double jeopardy. Furthermore, the Florida statute imposes interlock as a punishment for the criminal charge, not an administrative action taken against his driver's license.

Another question arising from the double jeopardy doctrine asked "does requiring a defendant to install an interlock as a condition of bail and subsequent criminal loss of driving privileges for Driving While Intoxicated constitute double jeopardy?" In a case in Texas [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)], Sells was sentenced to interlock as a condition of probation. Interlock is mandated as a condition of probation for multiple offenders and is routinely set as a condition of probation for drivers with a BAC >.20 by the trial judge who heard Sells' case. Although not a multiple DWI offender, Sells had a BAC of .371 at the time of his arrest. He argued that it would be double jeopardy to prosecute him criminally for the DWI charge since he had already lost his driving privilege and had been ordered to install an interlock. The Court of Appeals did not find evidence that the driver's license had been suspended or revoked, rather that Sells was issued an interlock restricted license. Furthermore, the court found that license revocation is not punitive and that, in fact, an interlock restricted license is a less severe infringement on the privilege of driving than is suspension or revocation; that an interlock restricted license as a condition of bail does not constitute punishment, and is therefore constitutional. Since license restrictions are not considered punitive in nature, the court ruled that double jeopardy does not apply.

Ex post facto laws protect against retroactive application of newly instituted laws and statutes. An ex post facto challenge asked "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?" Another case in Texas [Ex parte Elliott, 950 S.W.2d 714, (Ct. App. Tex. 1997) reh'g overruled, 1997], addressed newly passed legislation and found that because the interlock is a remedial measure (designed to protect the public interest of highway safety) and civil in nature, it is not a punitive sanction. Elliott, the defendant in this case, had a prior Driving While Intoxicated conviction within the past 5 years, which qualified him for an ignition interlock as a condition of bond. He argued that his last DWI offense was more than 5 years ago, but the court determined that it had occurred within the previous 5 years, making him eligible for the interlock requirement. If the new legislation had been criminal and punitive, then presumably it would have been judged unconstitutionally ex post facto. The trial court also viewed the interlock as a way to ensure the defendant's presence in court. The Court of Appeals ruled that the trial court judge did not abuse his judicial discretion in ordering Elliott to install the interlock, because the statute required installation as a condition of pretrial release given a prior DWI conviction in the past 5 years. The additional burden the interlock placed on the defendant was not considered relevant to the case.

A challenge to abuse of discretion asked "does a judge have the discretion to order an interlock license restriction as a condition of bail on a first offender when the statute only applies to multiple offenders?" In addition to the double jeopardy issue addressed above, the Ex Parte Sells case in Texas [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)] also addressed the question of judicial discretion. Sells was a first time offender ordered to install an ignition interlock as a condition of bail, a sanction mandated for multiple offenders. He argued judicial discretion was exceeded since he was a first time offender and the interlock is only mandated for multiple offenders. The court ruled that a statute mandating interlock for multiple offenders does not preclude its use for first offenders. The sentencing judge routinely orders an interlock for drivers with a BAC > .20, and Sells' BAC was .371. The court determined that the conditions of bail do not have to ensure a defendant's appearance in court, but that the interlock assists in ensuring presence

in court because the defendant wants to come to court to have the device removed. The court also determined that requiring the interlock for individuals other than those for whom it was mandated was not an abuse of discretion, since the interlock is remedial in nature, and thus is constitutional.

Another challenge to judicial discretion asked “can interlock be mandated for offenses not related to alcohol-impaired driving?” In an Ohio case [State v. Foureman, 68 Ohio App. 3d 162, 587 N.E.2d 925 (12th Dist. Preble County 1990)], a driver was pulled over for failing to drive within marked lanes after police received four calls about the erratic driving. A patrol officer located the driver and witnessed his crossing over marked lines on the road and attempted to pull the car over. The driver did not stop his vehicle until a truck prohibited him from traveling any further on the road. The officer detected an odor of alcohol on Foureman and had to assist him in walking to the edge of his car, where he refused to take the breath and field sobriety tests. Foureman was arrested and charged with driving under the influence of alcohol, failing to drive within marked lanes and failure to wear a seatbelt. The defendant pled not guilty to the three charges, but the trial court suspended his driver’s license for failing to take the breath test and for hazardous driving. Foureman then agreed to a plea bargain in which he pled guilty to failure to drive within marked lanes and failure to wear a seatbelt; the driving under the influence of alcohol charge was dropped due to insufficient evidence. During sentencing, Foureman admitted having an alcohol problem, which had previously impacted his driving. Accordingly, the court suspended his driving privilege, but also ordered an occupational license pursuant to installation of an interlock. Foureman appealed the interlock decision citing abuse of discretion for instilling punishment on a charge for which he was not convicted (i.e., driving under the influence of alcohol). The decision was reversed on appeal because the statute spelled out offenses authorizing the use of interlock, and since failure to drive within marked lanes was not listed as an offense requiring interlock, the occupational interlock requirement was overruled.

A challenge to whether the ignition interlock is mandatory or discretionary asked “can interlock be optional in the discretion of the court if the statute directs 'mandatory?’” In a case in Georgia [State v. Vilella, 266 Ga. App. 499, 597 S.E.2d 563 (2004)], the court did not order an interlock for a driver convicted of a second Driving While Intoxicated offense committed within a 5 year period, even though the law required installation of the device. The State of Georgia appealed the sentence since the court did not order the interlock as mandated. The interlock statute had previously read the “...court may...” order interlock unless there is “undue financial hardship...”, and it was amended to the “...court shall...” order interlock. The appeals court ruled that “shall,” meant, “shall” and that therefore the lower court erred in not ordering interlock. The court only has the discretion to waive the interlock requirement if a financial hardship exists, and in this case, it did not.

Another challenge regarding optional versus mandatory implementation of an interlock asked “if a statute directs the Department of Motor Vehicles to order an interlock conditional license under certain conditions, can defendants make an agreement with the prosecuting attorney that they not be subjected to the interlock requirements?” In a Pennsylvania case, [Conrad v. State, 856A.2d 199, (Pa. 2004)], Conrad had his license suspended for driving while suspended (his license was suspended after being convicted of a second driving under the influence violation). The trial court failed to order an interlock as required by statute. The Department of Transportation issued a one-year suspension and upon completion, required installation of an interlock on all vehicles Conrad owned. Conrad appealed the interlock requirement, but not the license suspension. The trial court found for the defendant and removed the interlock requirement. The Department of Transportation appealed the decision. The Commonwealth Court of Pennsylvania ruled that neither the court nor the district attorney has the authority to negotiate the interlock requirement and that the jurisdiction and authority regarding conditional relicensing issues lies with the Department of Transportation. The court, therefore, limited Conrad to an interlock restricted license as a condition of relicensure.

Another constitutional issue in the *Conrad v. Commonwealth of Pennsylvania* case [Conrad v. State, 856A.2d 199, (Pa. 2004)] challenged the applicability of an interlock being universally installed in all offender's vehicles. The question of interest asked "can interlock be ordered to be installed on all offenders' vehicles?" In this case, where the driver was ordered to have an interlock as a condition of relicensure by the Department of Transportation, the court found that if the statute reads "...to operate a motor vehicle only if it is equipped...", the Department may not require that offender to install an interlock device on his own vehicle but rather he is only required to drive an interlock equipped vehicle.

Medical exemptions to ignition interlocks have also been challenged, asking "if a statute mandates interlock under certain conditions, can the court order the Department of Motor Vehicles to exempt a driver for medical reasons?" In a North Carolina case [State v. Benbow, 169 N.C.App. 613, 610 S.E.2d 297 (2005)], the driver was ordered to install an interlock as a condition of relicensure after being convicted of driving while impaired, with a BAC of .16. The driver had the interlock installed, but was unable to provide a sufficient breath sample to start the vehicle, due to asthma and a cleft palate. She, therefore, challenged the condition of her relicensure on medical grounds. The trial court exempted Benbow from installing the interlock based on her medical conditions, instead ordering a limited driving privilege for one year without the interlock restriction. Upon request for reinstatement of an unrestricted license approximately one year after her appeal, the Department of Motor Vehicles (DMV) indicated that Benbow needed to have an interlock installed in her vehicle since she had a BAC of .16 at the time of her arrest. Benbow again appealed, and the trial court again removed the interlock requirement from her license. Then, the DMV appealed that decision, stating that the trial court did not have the jurisdiction to rule on administrative statutes. As a consequence, the trial court was found to lack jurisdiction to review the case and modify the interlock conditional license, because the court only has jurisdiction to review discretionary actions. The decision of the DMV therefore prevailed, since the lower court not legally have reviewed Benbow's appeal.

A case in Oklahoma [Smith v. State, 89 P.3d 1062, 2004 OK 22 (2004)] addressed the issue of installing interlocks on employer owned vehicles. The central question asked "can interlock be ordered on employer owned vehicles if the defendant is self-employed?" Smith was arrested for DUI and had his driver's license revoked for 180 days for refusing to take a breath or blood test. On appeal to the District Court, he was granted an occupational hardship license requiring installation of interlocks on vehicles used by his company. Smith then appealed the interlock requirement, and the trial court exempted him from having to install interlocks on employer owned vehicles. The Department of Public Safety appealed the trial court's decision arguing that Smith was self-employed, and therefore should be required to install interlocks in his work vehicles. The Court of Appeals agreed that Smith was self-employed and upheld the interlock restriction on work vehicles.

Smith then appealed to the Supreme Court of Oklahoma. Because the defendant owned 50% of the business (his wife owned the other half), the state argued that the defendant was self-employed, and not an employee. However, the Supreme Court determined that the interlock is not required to be installed unless the employer consents to such an installation and that being self-employed or employed by relatives with whom the driver lives does not matter. The Supreme Court also ruled that the statute focused on ownership of the vehicles, not ownership of the business; and since the corporation, not the defendant, owned the vehicles, they were not subject to interlock. Furthermore, it was concluded that in instances when Smith would be operating the vehicles, he would be acting as an employee, not as co-owner of the business.

Ignition interlocks have additionally been the subject of probable cause for arrest for alcohol-impaired driving. A case in Ohio [City of Akron v. Kirby, 681 N.E.2d 444, 451 (Ohio App. 1996)] asked "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?" After police pulled over a driver they were following because of

a report of solicitation and because he was changing lanes without signaling, the officers noticed that the driver had an interlock connected to an air compressor in the back seat of his car. The officers requested that Kirby blow into the interlock device, which he did, and the vehicle would not start. The police also observed that Kirby had bloodshot eyes, trouble walking and slurred speech; so he was subsequently arrested. Kirby filed a motion to suppress/dismiss the evidence, challenging that the police lacked probable cause to stop and arrest him for DUI. The court determined that the police had reasonable suspicion for the stop, including improper lane changes and the complaint of solicitation. The court also ruled that given the facts at hand, the police had probable cause for the arrest. Kirby had admitted to drinking; had bloodshot eyes, slurred speech, trouble walking, smelled of alcohol, was unable to start the vehicle when the interlock was connected to the ignition, and showed evidence of bypassing the interlock with an air compressor.

The sampling of cases reviewed here offer insight into various legal challenges for the use of ignition interlocks. The courts have generally been favorable to interlock programs because they further a legitimate state interest in protecting public safety on the roads and highways. In addition, interlocks have been found to be remedial and civil in nature and are not considered to be punitive. Statutes, however, need to be written carefully in order for judges to uphold the preventive and public safety intent of interlocks. Some existing cases show inconsistent case law, especially with regard to separation of powers and mandatory versus judicial discretion. A few of these decisions have overturned the use of interlocks; others have upheld them. Overall, we found no significant legal barriers to implementation of ignition interlocks. Yet, in states where the interlock is mandated judicially, judges routinely ignore the law and fail to order interlocks. Whether a law mandating a court to order an interlock is constitutional is still to be decided and may eventually require a Supreme Court ruling. Overall, laws appear to favor administrative programs because there is less constitutional burden in an administrative setting.

Disclaimer

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Memoriam

This research is dedicated to the memory of Dr. Robert Raleigh, who served on the Maryland Motor Vehicle Administration's Medical Advisory Board as both a member and Chief (1993-2005) without whose expertise, support, dedication and devotion this research would not have been possible.