

# HIGHWAY TO JUSTICE

WINTER 2016

From The ABA and The National Highway Traffic Safety Administration

## IGNITION INTERLOCK PROGRAM BEST PRACTICES & TRAINING FOR LAW ENFORCEMENT

*Brian A. Ursino, MBA, Director of Law Enforcement, American Association of Motor Vehicle Administrators (AAMVA)*

### A New Emphasis on Addressing an Old Problem

You've heard it before ... More than 10,000 people die (accounting for about one-third of all traffic fatalities), and nearly 500,000 more are injured every year in alcohol-related crashes in the United States (let's be clear, these are preventable crashes, not "accidents"). We should not forget the many faces behind these numbers. Not only individuals who have lost their lives or have been injured, but also the bereaved family members and friends who exponentially multiply the number of victims of these unacceptably high crashes. Although we continue to make progress, we are making gains in reducing these numbers toward zero too slowly.

In late 2014, the Toward Zero Deaths Steering Committee released the new "Toward Zero Deaths – National Strategy on Highway Safety"<sup>1</sup>. This steering committee included AAMVA, the American Association of State Highway and Transportation Officials, the Governors Highway Safety Association, the International Association of Chiefs of Police, and other traffic safety partners. In that document, ignition interlocks are listed as a key strategy and recognized as a valuable tool in preventing individuals arrested for alcohol-impaired driving from re-offending, which would lead to reductions in alcohol-related fatalities and injuries.

Arrest data shows ignition interlocks continue to be an under-utilized tool. This under-utilization is evident by simply comparing the approximately 304,600 ignition interlocks in use in the United States in 2013<sup>2</sup> to the approximately 1.1 million impaired driving arrests made in that same year<sup>3</sup>. This comparison shows we are still falling short of using ignition interlocks to their full potential.

### Ignition Interlocks as a Solution

The simple reason that alcohol-impaired drivers continue to drink and drive is because, without ignition interlocks, they can. Approximately 75 percent of people with a suspended driver's license (suspended for any reason) continue to drive.

Although not the only solution, ignition interlocks are a proven technology intervention that significantly reduces recidivism by alcohol-impaired drivers. Research shows that ignition interlocks reduce repeat offenders with reductions in subsequent arrests ranging from 50 to 90 percent<sup>4</sup>.

### Expansion of Ignition Interlock Programs Creates Demand for Best Practices

As of July 2015, twenty-four states required ignition interlocks for all .08 or higher BAC offenders and fourteen additional states required ignition interlocks for first offenders with BACs at higher levels (in most cases .15 or higher). Seven states required ignition interlocks upon second conviction and five states and the District of Columbia have other types of ignition interlock programs<sup>5</sup>. These numbers change with each legislative season, however, comparing to just five years ago when only 12 states required ignition interlocks for all offenders, the popularity of this proven countermeasure among legislators is apparent.

Virtually every jurisdiction has an ignition interlock law of some kind. However, there is no "model program" or national strategy that addresses every component of an ignition interlock program. One of the challenges for creating a "model" ignition interlock program is that some jurisdictions have strictly administrative programs that are the responsibility of the motor vehicle administration, some jurisdictions have judicial programs that are the responsibility of the courts, and still other jurisdictions have hybrid programs that combine administrative and judicial responsibility.

In 2013, the National Highway Traffic Safety Administration (NHTSA) published a *Model Guideline to State Ignition Interlock Programs*, and the Association of Ignition Interlock Program Administrators (AIIPA) developed their *Standardized Vocabulary & Standardized Best Practice Recommendations*. The AIIPA and NHTSA documents are both extremely valuable tools, however, AAMVA members identified gaps in these and a need for additional guidance for our DMV and law enforcement member agencies legislatively charged with administering ignition interlock programs.

*continued, page 2*

## Editor's Note

*Highway to Justice* is a publication of the American Bar Association ("ABA") and the National Highway Traffic Safety Administration ("NHTSA"). The views expressed in *Highway to Justice* are those of the author(s) only and not necessarily those of the ABA, the NHTSA, or the government agencies, courts, universities or law firms with whom the members are affiliated.

We would like to hear from other judges. If you have an article that you would like to share with your colleagues, please feel free to submit it for inclusion in the next edition of *Highway to Justice*.

To submit an article, please send it to the editor, Hon. Earl Penrod [penrod26d01@msn.com](mailto:penrod26d01@msn.com) with a copy to the staff liaison, Cheronne.Mayes@americanbar.org. Please contact Ms. Mayes for editorial guidelines.

The deadline for submission of articles for the Spring issue is March 2.

### DON'T FORGET:

Valuable resources can be found at:

National Highway Traffic Safety Administration  
<http://www.nhsta.gov/Impaired>

American Bar Association/Judicial Division/NCSCJ  
[http://www.americanbar.org/groups/judicial/conferences/specialized\\_court\\_judges/NHTSA.html](http://www.americanbar.org/groups/judicial/conferences/specialized_court_judges/NHTSA.html)

Highway to Justice - Archives  
[http://www.americanbar.org/publications/judicial\\_division\\_record\\_home/judicial\\_division\\_record\\_archive.html](http://www.americanbar.org/publications/judicial_division_record_home/judicial_division_record_archive.html)

National Judicial College  
[www.judges.org](http://www.judges.org)

Governor's Highway Safety Association:  
Impaired Driving Issues  
<http://www.ghsa.org/html/issues/impaireddriving/index.html>

AAA Foundation for Traffic Safety  
<https://www.aaafoundation.org/>

National Center for State Courts  
<http://www.ncsc.org/>

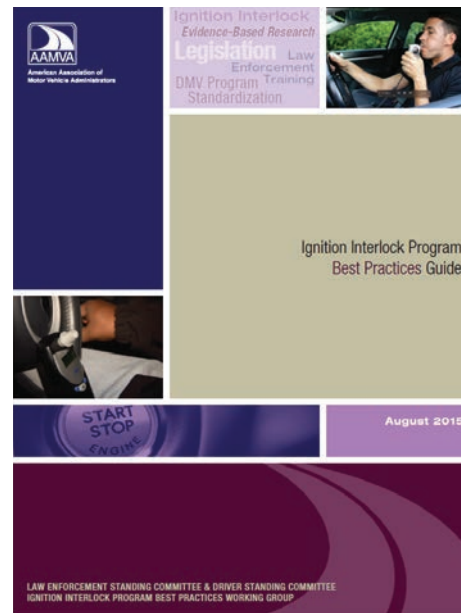
## IGNITION INTERLOCK PROGRAM BEST PRACTICES & TRAINING FOR LAW ENFORCEMENT continued from page 1

### AAMVA Steps In

Consistent with AAMVA's strategic priority to identify member needs/opportunities and develop solutions, in 2014, AAMVA created an Ignition Interlock Program Best Practices Working Group to develop best practices to guide our members who are charged with administering an administrative ignition interlock program.

The working group consisted of representatives from U.S. and Canadian transportation administrations, members of AIIPA, and judiciary, law enforcement, and ignition interlock industry representatives. The working group developed best practices based on review of scientific evidence-based research and by reviewing the best and most promising practices from some of the most respected ignition interlock programs currently administered by motor vehicle administrations and state law enforcement.

The AAMVA *Ignition Interlock Program Best Practices Guide* was published in August 2015 and is intended to assist jurisdictions that already have an ignition interlock program to benchmark their current program practices against the AAMVA recommended best practices and to make program adjustments as appropriate. For those jurisdictions that have not yet adopted an ignition interlock program, this document can serve as a blueprint for building a best practice based program from the ground up.



The key points of the Best Practices Guide include:

- Regulatory Standards
- Program Architecture – Manufacturer Oversight
- Program Architecture – Participant Oversight
- Standardized Reporting Process
- Reciprocity
- Outreach & Communication
- Model Legislation

### Law Enforcement Training

One of the primary weaknesses of any ignition interlock program is lack of compliance enforcement. Very few state law enforcement agencies have troopers dedicated to the mission of ignition interlock compliance. Most state, county, and local law enforcement officers are not familiar with ignition interlock requirements even if they know their jurisdiction has an ignition interlock law.

To help empower all law enforcement personnel to become a force multiplier in the realm of ignition interlock compliance enforcement, the working group produced a law enforcement roll-call style training video. The video runs approximately 9 minutes and covers the basics of ignition interlock operation and how officers should interact with drivers who produce a driver's license with an ignition interlock restriction and/or are driving a vehicle equipped with an ignition interlock. This training video can be found at <http://www.aamva.org/best-practices-and-model-legislation/>.

# IGNITION INTERLOCK PROGRAM BEST PRACTICES & TRAINING FOR LAW ENFORCEMENT

continued from page 2

## Conclusion

Since 2010, the number of states requiring ignition interlocks on all offenders has doubled from twelve to twenty-four. Moreover, now every state and the District of Columbia have some form of an ignition interlock program and continued growth in all offender ignition interlock laws is expected. To make effective headway on the Toward Zero Deaths National Highway Safety Strategy, those administering ignition interlock programs must do all they can to ensure their programs adhere to the best practices recommended by AAMVA, AIIPA, and NHTSA, as applicable. Moreover, our state, county and municipal law enforcement officers serving on the front lines must be trained so that we can hold offenders who are required to have ignition interlocks accountable to the requirements placed upon them. The *AAMVA Ignition Interlock Program Best Practices Guide*, and supplemental law enforcement training video have both been published to help accomplish these objectives.

- 1 <http://www.towardzerodeaths.org/>
- 2 [http://www.rothinterlock.org/2014\\_survey\\_of\\_currently\\_installed\\_interlocks\\_in\\_the\\_us.pdf](http://www.rothinterlock.org/2014_survey_of_currently_installed_interlocks_in_the_us.pdf)
- 3 [http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s./2013/crime-in-the-u.s.-2013/tables/table-29/table\\_29\\_estimated\\_number\\_of\\_arrests\\_united\\_states\\_2013.xls](http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s./2013/crime-in-the-u.s.-2013/tables/table-29/table_29_estimated_number_of_arrests_united_states_2013.xls)
- 4 Voas & Marques, 2003; Willis et al., 2005; Vezina, 2002; Tippetts & Voas, 1997; Coben & Larkin, 1999
- 5 [www.madd.org/drunk-driving/ignition-interlocks/status-of-state-ignition.html](http://www.madd.org/drunk-driving/ignition-interlocks/status-of-state-ignition.html)



## DATES TO REMEMBER

February 7 – Super Bowl 50



March 17 – St. Patrick's Day  
NCSCJ Traffic Court Seminar

March 16 - 18, 2016

Hotel Monteleone

New Orleans, LA

[www.ambar.org/2016TrafficSeminar](http://www.ambar.org/2016TrafficSeminar)

Lifesavers

Long Beach, CA

April 3 – 5, 2016

<http://www.lifesaversconference.org/>

Traffic Issues in the 21st Century

May 16 - 19, 2016

National Judicial College

Reno, NV

Faculty: Judge Earl Penrod (IN); Judge Neil

Axel (MD)

<http://resources.judges.org/eCasts/2016/TrafficIssues/Traffic.html>

# DUI STAGGERED SENTENCING – A PROVEN PROGRAM JUDGES TAILOR TO FIT THEIR OWN NEEDS

*Judge James E. Dehn, Tenth Judicial District Court, Isanti County, MN*

Once described by Time Magazine as “Jail on the Installment Plan” (April 29, 2002) for repeat DUI offenders, Staggered Sentencing, created by Minnesota District Court Judge James Dehn, in 1998, has spread across the country while taking on a local flavor by judges whose budgets do not allow them to run a DUI Court. This low cost sentencing tool involving only one or two short hearings a year was first reported in the ABA Criminal Justice magazine<sup>1</sup>.

The basics of Staggered Sentencing are as follows: The Staggered Sentencing model divides a standard executed jail sentence and Home Electronic Alcohol Monitoring into thirds or segments, stretching the full sentence out over the offender’s probation period. For example, an executed sentence of ninety (90) days can be divided into three thirty (30) day segments, with the first segment served immediately. The second and third segments are ordered to be served in years two and three of probation (Note: If there is only one year of probation segments two and three are served at six months and nine months). In addition, there are three - thirty (30) day home electronic alcohol monitoring segments ordered each year during the offender’s probationary period. A defendant must serve the first monitoring segment of the sentence. But on the day of sentencing, the judge tells offenders that they have permission to return to Court after completion of the first segments and seek a stay of the second and third segments of jail and monitoring. At each motion hearing, initiated by the offender, they must satisfy the judge that they are remaining sober, have the support of their probation officers (if available), and have committed no new alcohol-related offenses.

The burden rests solely on the offenders to convince the sentencing judge that they have remained sober during all segments of the sentence. If the offender is charged with another DUI offense at any time during the probation period they are warned that all non-executed jail time may be executed by the Court. For those judges who handle large numbers of sentencings and staggered motion requests, the dates for future hearings are set in advance and the offender is given notice of the court dates along with motion papers before leaving the courtroom.

Staggered Sentencing works best for repeat offenders when jail segments are 10 days or longer. Jail time of less than 10 days reduces the incentive to stay sober. The standard monitoring segments for all offenders, each year, are for 30 consecutive days over the Christmas/New Year’s holiday period.

## Judge’s Checklist

What follows is a step-by-step explanation of how to utilize the staggered sentencing approach:

1. Break the sentence and monitoring into separate time segments. Note: Use same dates (July 1<sup>st</sup> for jail segments and December 5<sup>th</sup> for monitoring segments) each year to avoid confusion for defendants, probation officers, and court administration.
2. Tell defendants you are the only judge with whom they will interact in future motions.
3. Assign the cases to yourself. (Rationale: all motions and probation violations will come to you).

4. At the time of sentencing, give defendants a “Staggered Sentence Packet” (see “defendant’s tool kit” below) that explains that defendants must serve a copy of the motion papers on the prosecutor and also file them with the court administration at least 10 days before the next motion date for each jail and monitoring segment.
5. Remind defendants that a) if they are actively sober and have the backing of the probation officer, the Judge will stay the next segment of jail and/or monitoring time, and b) if there is a new DUI charge during the probation period *all* jail time available to the court may be executed immediately.
6. Be encouraging to defendants in their sobriety.

## Defendant’s Tool Kit

To simplify the procedure for the offender, the judge provides during Court a “defendant’s tool kit”. This packet contains the motion papers they must use and file if they want to come back and ask for a stay of the next jail and/or monitoring segment. Included with the motion papers is a “Notice To Defendant” sheet that explains all the steps offenders must follow to stay the next jail and/or monitoring segment. The “Affidavit of Service” is also in the packet, providing offenders with the proper paperwork needed in order to serve their motions on the prosecuting attorney’s office and their probation agents (if available). The notice and motion papers have the specific dates listed in bold type so that offenders can plan ahead to attend court on the required day. The motion papers instruct offenders on what they must do to have their jail segments and/or monitoring segments stayed by the court.

Judge Dehn, in presenting the “Staggered Model” over the last 17 years, has discovered that some jurisdictions adjust the staggered blueprint to fit their needs. Some courts do not require offenders to bring motions, but instead, schedule review hearings once or twice a year as an alternative means of checking on the progress of offenders. The judge, at the review hearing, decides whether to suspend or execute the next segment of jail or monitoring.

Some courts, without low cost electronic alcohol monitoring services available, suspend the monitoring requirements altogether. Likewise, courts with monitoring services available, may work out a monitoring obligation in lieu of executed jail. The mixing and matching of jail and monitoring is a unique blend within the judges tool box that has proven effective for providing structure and the proverbial carrot at the end of the stick for motivated offenders.

The initial research by the Minnesota legislature in 2003 showed a 49.9% reduction in recidivism and a \$3,500.00 per offender jail bed savings!<sup>2</sup> NHTSA’s evaluation of the program found that staggered sentencing reduced recidivism by 30.6% as measured over a 4 year period following release from probation.<sup>3</sup> Judge Dehn reports that staggered sentencing, along with a community developed SAFE CAB program in Isanti County, Minnesota, has contributed to a reduction of 67.8% in DUI arrests from 2006 – 2013 according to the data reported from the Minnesota Department of Public Safety.

# DUI STAGGERED SENTENCING – A PROVEN PROGRAM JUDGES TAILOR TO FIT THEIR OWN NEEDS continued from page 4

Kelli Jasper, an experienced Minnesota criminal defense attorney, states, “I was not an immediate believer in staggered sentencing. I have been transformed into a believer. Staggered sentencings give my clients the incentive to fight to stay sober. Staggered sentences help us achieve that goal”. Isanti County Director of Court Services, Timothy MacMillan, observes, “In my twenty years in the correction field I have seen staggered sentencing become a model for increased public safety by placing the individual responsibility back on the offender.”

Staggered sentencing continues to present an effective low cost method that can truly be shaped to fit the needs of any criminal traffic

court. Few, if any low cost programs, judicial or otherwise, have shown such a magnitude of success in reducing repeat DUI offenders. It is all about dividing out the sentence and giving offenders the opportunity to take back control of their lives.

Staggered Sentence packet information, including Defendant’s tool kit, can be obtained by contacting Judge Dehn at [james.dehn@courts.state.mn.us](mailto:james.dehn@courts.state.mn.us).

- 1 Criminal Justice, American Bar Association, Section of Criminal Justice, Winter 2007, Volume 21, Number 4.
- 2 [www.house.leg.state.mn.us/hrd/issinfo/crime.htm](http://www.house.leg.state.mn.us/hrd/issinfo/crime.htm)
- 3 <http://www.nhtsa.gov/staticfiles/nti/pdf/811446.pdf>

## WELCOME NHTSA’S NEW JUDICIAL OUTREACH LIAISONS (JOLS) REGION 1 AND REGION 2

### Hon. Brian L. Burgess

Region 1 (Connecticut, Maine, Massachusetts, New Hampshire, Vermont, and Rhode Island)



Brian L. Burgess, a 37 year resident of Montpelier, VT was born in Washington, D.C. in 1951. He received a B.A. from the College of the Holy Cross, 1973 and a J.D. from Villanova University School of Law, 1976. Before gubernatorial appointment to the trial bench in 1992, he served as Deputy Attorney General responsible for law enforcement office administration, and white-collar and environmental criminal prosecutions (1985-1992); Deputy Commissioner and Commissioner of Labor and Industry overseeing workers’ compensation, ski tramway, fire and electrical safety code enforcement (1983-1985); Assistant Attorney General for fiscal recoveries and Medicaid fraud prosecutions (1978-1983); and staff attorney to Vermont’s Department of Social Welfare (1978). Earlier, Brian was an associate in private practice (1976-1978). He was designated Chief Trial Judge in 2004 by the Supreme Court, and by gubernatorial appointment to Associate Justice in 2005. On the trial bench, Brian initiated the state’s first alternative “therapeutic” dockets for defendants afflicted with chronic mental illness and substance abuse; and served on the Criminal Rules Advisory Committee, Criminal Court and Family Court Oversight Committees, and continued as Supreme Court liaison to the Criminal Rules and Oversight Committees.

Brian retired in September, 2013 and sits when called upon.

### Hon. John S. Kennedy

Region 2 (New Jersey, New York, Pennsylvania, Puerto Rico and Virgin Islands)



John S. Kennedy is a 1980 graduate of Eastern Kentucky University and a 1983 graduate of the University of Pittsburgh School of Law. He completed Treatment Court Judicial Training in 1997, 2001, 2006 and 2011 at the National Judicial College. He was the previous chair of the Pennsylvania Bar Associations Committee on Corrections and has served on various committees of the Pennsylvania Sentencing Commission and the Pennsylvania Commission on Crime and Delinquency. He resides in York, Pennsylvania with his family. His biggest claim to fame is that he is the father of the only African American Division One ski racer in the country.

In January of 2012, he undertook the expansion of the York County DUI Treatment Court. The program has expanded from 50 participants to over 150 in 8 months. He is a member of the York County Criminal Justice Advisory Board. He helped establish the York County Target 25 Program that modified the handling of DUI cases in York County to specifically promote public safety by monitoring repeat offenders pretrial with supervised bail and alcohol monitoring. He received the Governors’ Highway Safety Award in 2014 and the NHTSA Lifesavers Award for his involvement in the Target 25 Program.

He now presides over the York County Mental Health, Drug, Veterans and DUI Treatment Courts. He is also the Orphan’s Court Judge and handles a variety of Civil Court matters.

The Traffic Resource Center is an effort by the National Center for State Courts, funded by the National Highway Traffic Safety Administration, to collect information on the latest information in traffic adjudication and distill it into an easily accessible format. One of the key services of the TRC is responding in a timely manner to requests for information and assistance from the court community, the media, and the public. These technical requests are handled through Greg Hurley ([ghurley@ncsc.org](mailto:ghurley@ncsc.org)) and Deborah Smith ([dsmith@ncsc.org](mailto:dsmith@ncsc.org)).

Another prominent feature of the Traffic Resource Center is the monthly issue briefs. Each month, the Knowledge and Information Services staff of NCSC who supports the Traffic Resource Center researches and publishes a short (3 to 5 page) brief on various traffic adjudication topics. For example, a recent issue brief, "The Drivers License Compact," explores the history, adoption, functioning, and purpose of the Drivers License Compact that has been adopted by 44 states. Other issue briefs discuss topics such as sobriety checkpoints, third-party liability, types of blood in BAC analysis, and penalty enhancements from prior convictions. The briefs are a useful tool for the general public as well as the court community, and have been cited in the Washington Post and the Congressional Record. Select issue briefs also have PowerPoint slides to use for training on the topic.

The Traffic Resource Center also houses information modules on current and relevant topics. For example, the module on the Supreme Court case *Missouri v. McNeely* summarizes the case and then discusses state court cases which have followed it and been significantly altered by it. The module page, which is updated periodically, also contains an extensive list of state court cases which discuss and analyze the decision and its impact on state impaired driving laws.

Finally, the Traffic Resource Center is also a repository by which many other resources on traffic law can be accessed. The website holds a comprehensive list of traffic materials which can be found in the NCSC library, either online or by request to our TRC support staff. There are also pages for many individual traffic and impaired driving issues which contain links to studies, articles, and other resources on those specific topics.



To learn more about programs offered by NHTSA, please contact one of the following:

**Judicial Fellow:**

Hon. Earl Penrod  
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**Tribal Courts Fellow**

Hon. J. Matthew Martin  
[abajudicialfellow@gmail.com](mailto:abajudicialfellow@gmail.com)

**Judicial Outreach Liaisons:**

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Hon. Mary Jane Knisely, Judicial Outreach Liaison, Region 10 (Montana, Idaho, Oregon, Washington, Alaska)  
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### Traffic Issues in the 21st Century; May 16-19, 2016, Reno Nevada

The arena of traffic-related legal matters is constantly evolving, and as such, it is necessary for traffic adjudicators to stay abreast of the newly emerging issues. Our Traffic Issues in the 21st Century course will delve into the most up-to-date, pertinent traffic topics that are appearing in our courts today.

This years' topics will include: the fundamentals of alcohol and drug testing; understanding addiction issues; marijuana legalization and related traffic issues; the Standardized Field Sobriety Test (SFST) information and demonstration; distracted driving issues; elder driver issues; self-represented litigants; and Commercial Driver's License issues.

### State Judicial Outreach Liaisons:

**Delaware:** Hon. Richard Gebelein  
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**Washington:** Hon. Scott Bergstedt  
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# Save the Date

We are busy making plans for the  
**2016 Traffic Court Seminar,**  
and hope you will make plans now to attend

**March 16 – 18, 2016**  
**New Orleans, LA**

All sessions will be held at the Hotel Monteleone.

The complete agenda and registration details will be finalized in late fall. Check our website, [www.ambar.org/jdnscsj](http://www.ambar.org/jdnscsj) where details will be posted when available.

If you want to make sure you are on our mailing list, contact [Cheronne.Mayes@americanbar.org](mailto:Cheronne.Mayes@americanbar.org)

