

Crash, Boom, Bang



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WV Supreme Court Upholds License Revocation for Nolo Plea

In STATE EX REL. BAKER v. BOLYARD, Dir. Div. Motor Vehicles, No. 33303, (October 30, 2007), the defendant asked the Supreme Court to overturn DMV's decision to revoke the defendant's license after he had entered a *nolo contendere* plea to DUI.

The defendant had requested an administrative hearing prior to his *nolo* plea. After the DMV received notice from the magistrate clerk of the defendant's plea, the DMV automatically revoked the defendant's license without the hearing.

The defendant argued that the Court's prior decision in STATE EX REL STUMP v. JOHNSON, 217 W.Va. 733, 619 S.E.2d 246 (2005), did not mandate the DMV to revoke the defendant's license upon a *nolo* plea, rather only if the defendant pleaded or was found guilty. The Supreme Court disagreed with the defendant and further clarified their STUMP decision saying that a *nolo* plea was the same thing as a guilty plea for the purposes of DMV revocation of licenses. Because the magistrate found the defendant guilty after a *nolo* plea the DMV was mandated to revoke the defendant's license per statute.

Keep this ruling in mind when negotiating *nolo* pleas to any DUI offense.

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In This Issue:

Ignition Interlocks



Ignition Interlocks

Because of the strong nationwide push by MADD to make ignition interlocks mandatory for every defendant convicted of first offense DUI and the WV legislature currently considering the same, here is a close look at ignition interlocks and what prosecutors should know about them.

An alcohol ignition interlock is a sophisticated breath-testing device that is connected to the ignition system of a vehicle. When the device detects a pre-set level of alcohol in a breath sample, presumably provided by the driver, it prevents the vehicle from being started by blocking electrical power to the starter. Advances in the ignition interlock field in the past two decades have been substantial. Sound research demonstrating the effectiveness of these devices in preventing impaired individuals from driving a vehicle has been amassed—research has consistently found reductions in recidivism of 45-90%. The technology is very advanced and most problems associated with circumvention have been overcome. The device is designed to provide data of such things as failed attempts to start the vehicle and efforts to tamper with the device. The characteristics of the devices are flexible, so they can be tailored to accommodate a broad range of jurisdictional requirements.

Despite these advances, however, there has been limited growth in interlock programs. One reason that participation rates in interlock programs in most jurisdictions are low is that most criminal justice professionals have limited opportunities to learn about these sophisticated devices and are not well-informed about programs operating in their own jurisdictions. Moreover, what they do know may be colored by urban myths, legends, and misinformation that has been widely circulated and never adequately addressed. Given such a situation, it is not surprising to learn that many prosecutors do not recommend and many judges do not order the device, even when mandated by law.

Important Facts Prosecutors Should Know About Interlocks

Technology:

- Contemporary interlock devices use highly reliable fuel cell technology—the same technology used in preliminary breath-testing (PBT) devices and many of the evidential breath testing devices and passive sensors. They are alcohol-specific and have greater stability, meaning they require calibration checks less frequently (60-90 days).



After watching the big game with his buddies at the local bar, Eric decided he was sober enough to drive. He was wrong.

Now, to help ensure that Eric does not endanger lives by drinking and driving again, he blows into his interlock device to start his car.





Known in the office as “the party animal,” Fred had a habit of being the life of the office party and then driving home intoxicated.

Now “the party animal” has to use his interlock just to get to work.



- Most devices have extensive anti-circumvention features including: sealed wiring, a data recording device that records all events and usage of the vehicle with a time/date stamp, technology to detect non-human breath samples, and a running retest which requires subsequent breath tests while the vehicle is in use.
- Devices have a range of programmable features that can be tailored to jurisdictional requirements.

Facts About Interlocks:

- The goal of the interlock device is incapacitation-offenders are unable to drink and drive while the interlock is installed. However, ignition interlocks alone will not result in behavior change; when combined with treatment and other sanctions, these devices hold promise for such outcomes.
- Interlocks permit offenders to remain in the community, fulfill family and employment obligations, and participate in treatment. These devices are less expensive than incarceration or house arrest, and more effective than license suspensions.
- Providing a sufficient breath sample is an issue for a very small number of offenders. Most devices can be adjusted to accept a reduced breath volume.
- Mouth alcohol (e.g., from mouth wash) can result in a positive reading in a limited number of cases. Similar to an evidential breath testing device, waiting 15 minutes or rinsing the mouth with water will clear mouth alcohol and permit the driver to start the vehicle, provided his or her BAC is below the pre-set level.
- Many offenders fail to install an ignition interlock, despite a court order to do so. Ordering a certificate of installation as a condition of probation can ensure offenders install the device.

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Interested in learning more about ignition interlocks?

Go to www.trafficinjuryresearch.com/index.cfm, to order “Ignition Interlocks: From Research to Practice” from the Traffic Injury Research Foundation.



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