

# Traffic Safety Standard

Providing relevant information to Montana's prosecutors, law enforcement and judges

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## In this issue:

A New Look at Ignition Interlock Technology	1
Powell County Makes a New Year's Resolution	2
Ignition Interlock Vendors	5
Montana Has 15 New DREs	6
The "C" in Montana's A.C.T. Program Gets a Make-Over	6
Traffic Safety Case Highlights	7
Training Dates	8



Montana's Traffic Safety Resource Prosecutor (TSRP) position is funded by the Montana Department of Transportation as part of a comprehensive effort to reduce the number and severity of traffic crashes, injuries, and fatalities on Montana highways.

## A New Look at Ignition Interlock Technology

Nine Montanans attended a regional Ignition Interlock Institute in Seattle on December 7-8, 2010. Hosted by the National Highway Traffic Safety Administration and Mothers Against Drunk Driving (MADD), evidence was presented to support the use of an effective ignition interlock program as one element of a state's program to reduce impaired driving.

The Montana team had the most diverse representation at this conference of any of the states. Participants included two legislators, a judge, an assistant attorney general, a DUI court coordinator, an expert in environmental prevention strategies, and employees from the state motor vehicle division (DOJ) and MDT highway safety.

There were two breakout sessions that provided attendees the opportunity to discuss challenges and solutions for Montana. One of the action items identified was to continue the work that began at the conference. Judge Greg Mohr from Sidney Montana agreed to take a leadership role in convening a working group.

National research estimates the average drunk driver has driven drunk 87 times before a first arrest. Montana-specific research of convicted DUI felons participating in the WATCH Program estimates that number is much higher: 369 times<sup>1</sup> between each DUI conviction.

A recently released study<sup>2</sup> of 100,000,000 driving records from 1973 to 2008 shows the recidivism rate among first offenders more closely resembles that of second offenders than of non-offenders. According to Brian Ursino, Director of Law Enforcement – American Association of Motor Vehicle Administrators, "The study shows that first offense leniency is no longer appropriate because the behavior of the first offender and the second offender is virtually the same. Given enough time, and if allowed to re-offend due to the leniency often shown first offenders, those first offenders are likely to become multiple offenders."<sup>3</sup>

After a BAC refusal or DUI conviction, an individual's driver's license is often suspended. In reality, three out of four of those with a suspended license still drive, and quickly learn how easy it is to do so without being detected.



Ignition interlocks are a simple and economical way to make sure that offenders can legally drive to and from work, college or treatment, pick the kids up from school, and buy groceries, but that they can't drive drunk.

The ignition interlock is about the size of a cell phone and wired into the ignition system.

...Continued on page 3

1. Assessing Montana's Multiple Offender Drunk Drivers For Prevention Strategy Ideas - Preliminary Report for the Law and Justice Interim Committee - January 29th, 2010
2. Study published in May 2010 by the American Journal of Public Health
3. Brian Ursino quote from "Between the Lines" Volume 19, Number 1, January/February 2011, National Traffic Law Center
4. Studies conducted by Dr. Richard Roth, Executive Director – Impact DWI

## *Powell County Makes a New Year's Resolution*



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### MEMORANDUM

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**DATE:** December 30, 2010

**TO:** WHOM IT MAY CONCERN

**FROM:** Lewis K. Smith  
Powell County Attorney

**RE:** NEW YEAR'S RESOLUTION

The New Year's Resolution of the Powell County Attorney's Office is to not deal down DUI charges in 2011. During the past four years many people in and around Powell County have lost their lives to drunk or drug impaired drivers and many children have been injured or traumatized by their parent driving impaired and wrecking their vehicle. Many steps have been taken to try to reduce the number of impaired drivers on our roads, but the problem seems to continue, so I will be taking this step to try to convince residents of Powell County and people travelling through Powell County not to take to the roads in an impaired condition. If law enforcement issues a citation for driving while in a drunk or impaired condition the ticket will be prosecuted through conviction as such. Many people have brought to us their tale of woe as to why we need to reduce the charge so they can keep their job, business or position in the community. However, it is not our job to protect those for you. If you cannot afford to lose those things, do not drive drunk or impaired.

Each case will be reviewed regarding probable cause and evidence, however barring a problem with those items, the case will not be reduced.

If you have any questions, please do not hesitate to contact me.

*A New Look at Ignition Interlock Technology continued from page 1*

A convicted drunk driver must blow in to the device in order to start the vehicle. If the person's BAC exceeds a pre-set limit (usually 0.02), the vehicle won't start

A survey of 1513 interlocked offenders in New Mexico<sup>4</sup> found 89% thought the interlock was helpful in avoiding another DUI. Eighty-three percent said it was helpful in reducing their drinking and 70% thought it was cost-effective. Interlocks were perceived as a fair sanction by 85% of over 12,000 offenders surveyed.

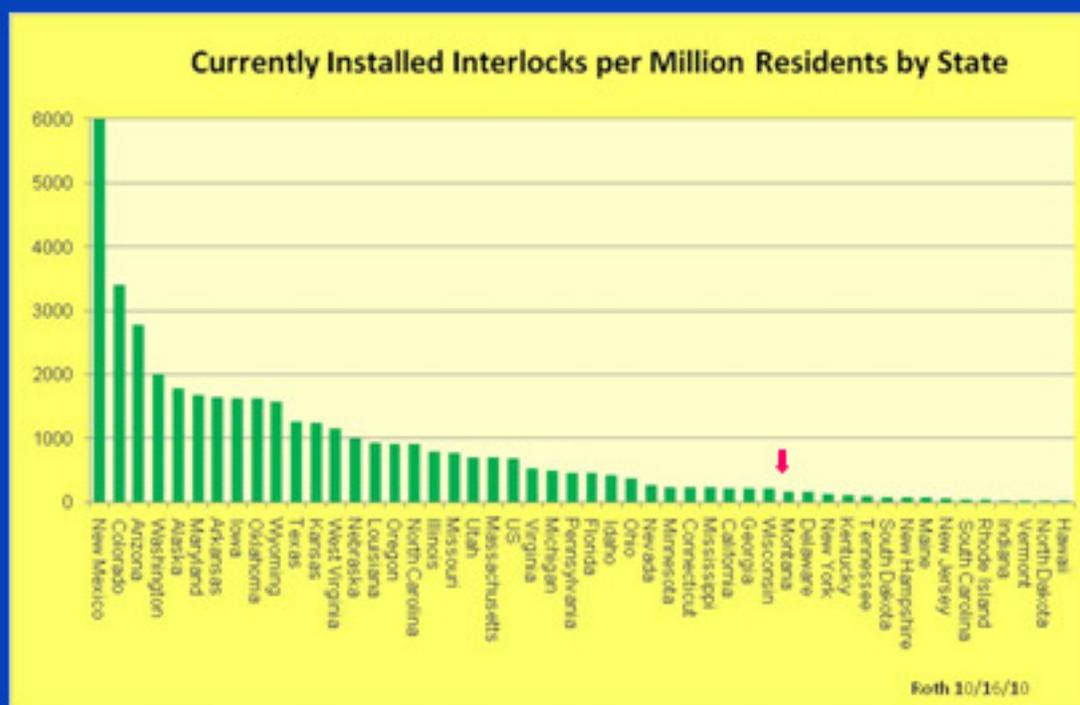
There are two types of technology available in ignition interlock: the fuel cell and the sensor cell (Taguchi cell). The latter is more prone to false positives, easier to tamper with, and less reliable in cold temperatures. The only device available in Montana is the newer fuel cell technology, which is precise, dependable, and contains numerous anti-circumvention and anti-tampering features.

Recent advances include photo identification which completely eliminates any questions regarding who provided the breath sample, and the transmission of real time data including GPS location. If tampering is detected (e.g. covering the camera with tape or disconnecting it), the unit sends a message to the interlock to abort the test, thus preventing the user from starting the vehicle.

The ignition interlock device is comparable to having an "electronic probation officer" in the passenger seat of a vehicle 24 hours a day, 7 days a week. This "probation officer" logs the number of attempts to start the vehicle, date and time of each start, BAC readings, whether the start was successful or not, whether the individual remained sober during the trip, and mileage. As part of this monitoring, the device prompts the driver to pull over and provide random tests.

From this data, a prosecutor, compliance officer, treatment professional, and/or judge can determine whether or not the interlocked vehicle is being driven (or parked and another vehicle used), whether or not the offender attempted to start the vehicle while impaired, and how many times this happened. This record can be used to monitor compliance with the sanction, evaluate the level of threat the offender would pose if removed from the interlock program, and supports a change in drinking/driving behavior.

## Per Capita Interlocks by State



*A New Look at Ignition Interlock Technology continued from page 3*

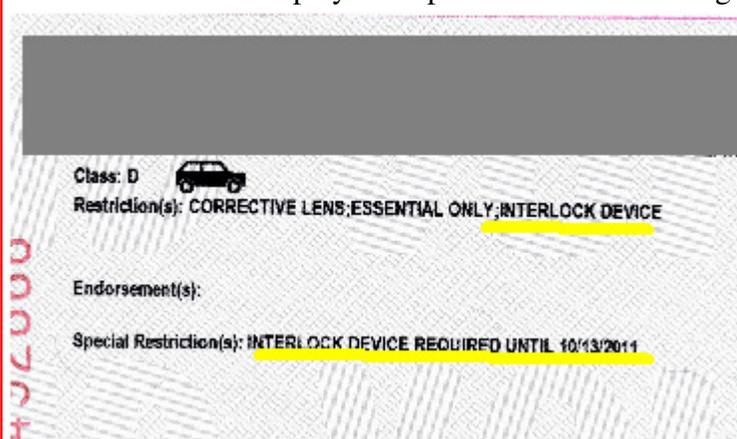
The utility of the ignition interlock may be extended beyond impaired drivers. In other situations where alcohol was a factor, such as partner/family member assault (PFMA), judges have found it useful to order the use of ignition interlock as a monitoring tool. If the individual has committed one crime while under the influence, odds are good that the individual will also later drive under the influence.

Most states including Montana are currently installing interlocks in less than 10% of the vehicles of those arrested for drunk driving. At present, the ignition interlock restriction is only applied to a small percentage of eligible DUI/BAC violators – approximately 100 first-time offenders and 350 second/subsequent offenders each year. This is a tiny fraction of the 6,500-7,000 alcohol-related convictions reported annually to the Motor Vehicle Division of the Montana Department of Justice.

There are currently five approved interlock vendors in Montana, with 19 installation locations across the state, and several nearby locations in neighboring states. Some vendors provide a mobile service that will go to any location (see list on the next page).

Installation cost ranges from \$75 - \$120. The monthly lease fee is \$65 or more. Cost to the offender is equivalent to less than one drink per day (\$2.16). If the installation cost is included in the daily calculation, it amounts to \$2.83 per day for a six month period ( $\$120 + (\$65 \times 6) \div 6 \text{ months} \div 30 \text{ days/month} = \$2.83$ ).

Law enforcement can play an important role in checking the proper use of these devices during traffic stops.



The back of the driver's license indicates in two places if the individual is restricted to an interlock device (see image). If no device was installed, or there is evidence of tampering or circumvention, the officer should cite the individual for violation of § 61-8-440, MCA.

Modern interlocks can be programmed so that certain triggers (e.g. a dirty blow or a failure to make a required blow) will cause a notice on the interlock screen telling the driver to bring the vehicle in to a service center for a data download within 48 hours, or the vehicle will not start.

All these features allow the interlock to be used both to control the vehicle and to monitor the individual. The Judge can order an individual to blow into the device even when the car is parked and this data can be used to evaluate whether the individual is complying with a "no drinking" court order. For example, DUI and other offenders can be required to go out to the vehicle, face the camera and blow into the interlock at certain times each day, in addition to routine blows to start the vehicle for driving. If they don't blow, or if they blow dirty, the Early Recall sign informs them that they have to bring the vehicle into the service center. If the data logger download shows a probation violation, an e-mail notification can be sent to a predetermined individual, such as the prosecutor or compliance/probation officer.

The device serves as a behavior modification tool, along with Prime For Life (the mandatory DUI education and pre-treatment course), self-help groups, and chemical dependency treatment if indicated by the chemical dependency evaluation.

Best practice suggests the interlock remain installed until there is evidence of changed behavior. For example, this could be one year of alcohol-free driving, logging at least 5000 miles with no recorded BAC over 0.05 by any driver.

Many offenders are able to avoid installation and monitoring. In fact, given a choice, most offenders choose revocation over interlock ... and they keep driving after drinking. Revoked offenders are 3-4 times more likely to be re-arrested for DUI than interlocked offenders.

Consistent follow-up with offenders to ensure installation and compliance can be accomplished with through strong coordination between courts, licensing agencies, law enforcement, and service providers.



### **Montana Has 15 New DREs**

Fifteen law enforcement officers from across Montana recently graduated from Drug Recognition Expert (D.R.E.) School in Helena. D.R.E. school consists of three weeks of rigorous academic and hands on training designed to teach officers how to detect people under the influence of drugs. Officers studied the seven drug categories and the effects drugs have on the human body. During the hands on portion of the training, they investigated drug users in Maricopa County Jail in Arizona. “The expansion of the DRE program in Montana is helping to curb our drugged driver epidemic,” said Trooper Kurt Sager, Montana D.R.E. Coordinator. Twenty-four more Montana law enforcement officers will attend D.R.E. school in April. For information about the D.R.E. program or how to become a D.R.E., contact Trooper Sager at [ksager@mt.gov](mailto:ksager@mt.gov).



*January DRE school graduates and instructors representing Montana Highway Patrol, Billings Police Department, Bozeman Police Department, Silver Bow Law Enforcement Department, Belgrade Police Department, Gallatin County Sheriff's Office, Park County Sheriff's Office, and Montana State Crime Lab.*

### **The “C” in Montana’s A.C.T. Program Gets a Make-Over**

Montana recently adopted a new curriculum for the course used in the A.C.T. Program. It is the Prevention Research Institute’s *PRIME For Life*<sup>®</sup> curriculum. *PRIME For Life*<sup>®</sup> (PFL) is used by many other states, as well as the U.S. Army. This 10-hour course is specifically designed to change risky behaviors, like driving under the influence, using a research-based persuasion protocol. This protocol has been shown to contribute to lower recidivism rates (DUI re-arrests) in seven independent studies. Those who receive a DUI in Montana are now required to go through a minimum 12-hour program. Up to 20 hours may be required for repeat offenses. Previously, only 8 hours were required.

Montana law requires those convicted of driving under the influence of alcohol or drugs (DUI) to complete the A.C.T. Program. The purpose of the program is to reinforce the consequences of DUI conviction and interrupt the cycle of driving impaired

*...Continued on page 7*

*The “C” in Montana’s A.C.T. Program Gets a Make-Over* Continued from page 6

The A.C.T. program has three components:

**Assessment (A):** an evaluation to determine if the offender is chemically dependent. This must be performed by a licensed addiction counselor (LAC) at a state-approved program.

**Course (C):** 8 hours of education regarding Montana law, consequences for driving impaired, and how alcohol/drugs affect a person's physiology, driving, and choices. This must be provided at a state-approved program. Before a licensed addiction counselor may teach PRIME for Life, he/she must complete instructor training and certification.

**Treatment (T):** the level of treatment recommended will depend on the level of chemical dependency found in the assessment. Recommendations will vary from out-patient to residential in-patient treatment. If an offender disagrees with the results of their assessment, they may seek — at their expense — a second opinion from an independent counselor. An offender may seek treatment from any LAC practicing in Montana.

By adopting *PFL* as the sole A.C.T. curriculum in the State, MDT and DPHHS expect the number of multiple DUI convictions and impaired driving crashes to be reduced.

## Traffic Safety Case Highlights

Court decisions affecting enforcement on our roads:

**Weer v. State, 2010 MT 232.** Particularized suspicion existed when Weer swerved twice toward the center line, then touched the center line on third swerve.

**State v. Larson, 2010 MT 236.** Particularized suspicion existed when defendant “screached his tires and revved his engine continually, while crossing a busy intersection” and had a potential mud-flap violation. Miranda need not be read during investigatory phase of DUI stop. Only expert witness can testify that certain drugs caused impairment. Officers were not qualified as experts in this case. *\*Editor’s note: Do not be confused when reading this case by the defense questions and officer’s testimony. Poor performance on SFSTs HAS been linked to impairment by marijuana and/ or other drugs.*

**State v. Hafner, 2010 MT 233.** Probable cause of DUI existed without SFST evidence based on the following: defendant’s car was stuck in a ditch, both he and the vehicle smelled strongly of alcohol, he appeared to have urinated on himself, he couldn’t keep his balance, his “eyes were glassy and bloodshot, his speech was slurred, and he had trouble understanding and responding to the simple instruction of getting out of the vehicle by way of the passenger side.” The court encouraged officers to conduct SFSTs whenever possible (inclement weather prevented them in this case).

**State v. Schubert, 2010 MT 255.** Construction zone flagger had probable cause of DUI for citizen arrest after receiving a report of a drunk driver from a known source and observing a vehicle consistent with the report driving in an erratic manner.

**State v. Gieser, 2011 MT 2.** Ineffective assistance of defense counsel existed when no objection was made to the lack of foundation for either 1) testimony about the correlation between intoxication and HGN or 2) reliability of preliminary alcohol screening test instrument.

**State v. Murray, 2011 MT 10.** Rural unpainted road was sufficiently wide for violation of Montana Code Annotated Section 61-8-321 (2009) (failing to drive to the right side of the roadway) to occur, so particularized suspicion (and the higher standard of probable cause) existed when pick-up drove on the left side of the road.

For the complete text of the opinions, go to <http://searchcourts.mt.gov/>.

## Montana TSRP

**Erin T. Inman, PLLC**

11 Friendship Lane, Ste 101

Montana City, Montana 59634

Phone: 406-449-1255

FAX: 406-449-2188

Email: [etinman@qwestoffice.net](mailto:etinman@qwestoffice.net)

Website: <http://www.mdt.mt.gov/tsrp/>

### Primary Enforcement Saves Lives

The Case for Upgrading  
Secondary Safety Belt Laws



U.S. Department of Transportation  
**National Highway Traffic Safety  
Administration**

NHTSA document available now. Get your copy at:

<http://www.nhtsa.gov/people/injury/enforce/PrimaryEnforcement/>

## Training Dates

Course Title	Date	Location	Registration Information
<b>2011 Northwest Alcohol and Substance Abuse Conference</b>	July 14, 15, 2011	The Hyatt Regency at Gainey Ranch, Scottsdale, AZ	<a href="http://www.northwestalcoholconference.org/">http://www.northwestalcoholconference.org/</a>
<b>Boozing, Doping, Smoking, Clothing &amp; A Touch of Spice</b>	July 29	9:00 am – 4:00 pm Crowne Plaza Hotel (Downtown) 27 N. 27th Street, Billings	Contact <a href="#">Officer Jermaine Galloway</a>

For information about more trainings and conferences, please go to <http://www.mdt.mt.gov/tsrp/> and click on "Training"

MDT attempts to provide accommodations for any known disability that may interfere with a person participating in any service, program, or activity of the Department. Alternative accessible formats of this information will be provided upon request. For further information call (406) 444-3423, TTY (800) 335-7592, or the Montana Relay at 711.