



ALCOHOL-RELATED OFFENSES IN TITLE 28 OF THE ALASKA STATUTES

A Report to the Alaska State Legislature

December 1, 2016

A guide to Alaska's alcohol-related driving and motor-vehicle offenses,
and recommendations for improvement.

The Alaska Criminal Justice Commission

<http://www.ajc.state.ak.us/alaska-criminal-justice-commission>

ACJC Title 28 Report

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Executive Summary

The Alaska Legislature asked the Alaska Criminal Justice Commission (Commission) to evaluate the alcohol-related offenses in the motor vehicle statutes (Title 28). In this report, the Commission has provided an extensive overview of these offenses and made recommendations for improvement. Three appendices are also attached which explain some of the Commission's research in more depth.

In brief, the Commission's recommendations are:

A. Revision of the alcohol-related offenses in AS 28 is necessary.

B. License Revocation

- **B1.** Administrative license revocation (ALR) should be maintained.
- **B2.** Judicial license revocation, which often serves a distinct function from administrative license revocation, should also be maintained.

C. Ignition interlock devices (IIDs)

- **C1.** The DMV should not require IID use as a predicate for license reinstatement, unless it is so ordered by a court.
- **C2.** Retain installation of IID (or comparable device) as a prerequisite for approval of limited licenses during the pendency of a revocation period.
- **C3.** Add an option to permit approval of limited licenses for drivers who are using remote continuous alcohol monitoring technologies (such as a Secure Continuous Remote Alcohol Monitor (SCRAM) device).

D. Sanctions

- **D1.** Refusal offenders should also be eligible for limited licenses, just as DUI offenders are.
- **D2.** Current IID restrictions should still apply for any limited license approved during a revocation period, but IID requirements could alternatively be satisfied by remote transdermal monitoring or a 24/7 program.

The Alaska Criminal Justice Commission

The Alaska State Legislature created the Alaska Criminal Justice Commission in 2014.

The Commission consists of 13 members:

- Gregory P. Razo, Chair, representing the Alaska Native Community
- Alexander O. Bryner, designee of the Chief Justice
- John B. Coghill, Senate, Non-Voting
- Wes Keller, House, Non-Voting (until Jan. 2017)
- Jahna Lindemuth, Attorney General
- Jeff L. Jessee, Alaska Mental Health Trust Authority
- Walt Monegan, Department of Public Safety Commissioner
- Stephanie Rhoades, District Court Judge
- Kristie L. Sell, Municipal Law Enforcement
- Brenda Stanfill, Victims' Rights Advocate
- Quinlan G. Steiner, Public Defender
- Trevor N. Stephens, Superior Court Judge
- Dean Williams, Department of Corrections Commissioner

I. Introduction & Background

The Alaska Legislature created the Alaska Criminal Justice Commission (Commission) in 2014 to evaluate state criminal laws and practices and recommend changes to reduce recidivism and improve public safety.¹ The bill creating the Commission was known as SB 64. Since its creation, the Commission has forwarded a number of recommendations for changes to state law and policy. Many of these recommendations were included in SB 91, the omnibus criminal law bill that was enacted in July 2016.

A. Legislative questions related to Title 28

In SB 64, the Alaska Legislature posed six specific questions for the Commission about alcohol-related offenses in Title 28 of the Alaska Statutes.² These questions are listed below. The Commission was to report on these questions by July 1, 2017.

SB 64 Questions Regarding AS 28

- Is a revision of the alcohol-related offenses in AS 28 necessary?
- Should both administrative law revocation and judicial revocation processes be maintained?
- What is the effectiveness of ignition interlock devices in reducing the offenses of driving while under the influence of an alcoholic beverage, inhalant or controlled substance and refusal to submit to a chemical test and reducing recidivism?
- Should the punishments, fines, and associated driver's license revocation periods be decreased or increased?
- Are there effective programs that promote offender accountability, emphasize swift and certain, yet measured punishment, reduce recidivism, and maximize the offender's ability to remain productive in society?
- Should limited licenses be available for persons charged with or convicted of DWI or Refusal while providing for public safety?

See SB 64, Section 37

In SB 91, the Legislature posed additional questions, directing the Commission to prepare a report regarding the effectiveness of the penalties, fines, and reformatory and rehabilitative measures under state law for the offenses of driving while intoxicated, refusal to submit to a chemical test, and driving without a valid driver's license. The Legislature asked that the report include "an opinion on whether the penalties, fines, and reformatory and rehabilitative measures

¹ See AS 44.19.645.

² Title 28 contains Alaska's motor vehicle laws. Motor vehicle means a vehicle which is self-propelled except a vehicle moved by human or animal power, thus including snowmachines and all-terrain vehicles which may not be subject to registration. AS §28.90.990(17) ("Definitions").

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under state law for the offenses of driving while under the influence, refusal to submit to a chemical test, and driving without a valid driver's license reduce recidivism, promote rehabilitation and protect the public."³ Because both sets of questions posed by the legislature are related and encompass similar issues, this report addresses all of the legislative queries.

B. Offenses Discussed in this Report

In addition to its specific questions about the crimes listed above, the Legislature asked the commission to report on "whether a revision of the *alcohol-related offenses* in AS 28 is necessary." The word "offense" is not used or defined in Title 28.⁴ However, the criminal code (Title 11) defines "offense" to include both crimes and non-jailable acts (infractions or violations). To be consistent with the Title 11 definition, this report discusses both crimes and infractions.⁵ Further, this report covers all DUI offenses, not merely those which are alcohol-related. Finally, driving without a valid operator's license (DVOL) language and penalties⁶ also are evaluated to determine consistency with SB 91's recent changes to the driving with a suspended, revoked, or limited license statute.⁷

This report uses acronyms to describe the various alcohol-related offenses in Title 28:

Definition of Offense	Shorthand
Operating a vehicle, aircraft or watercraft while under the influence of an alcoholic beverage, inhalant, or controlled substance	DUI
Refusal to submit to a chemical test	Refusal
Driving while license canceled, suspended, revoked, or in violation of a limitation	DWLS
Operating a commercial motor vehicle while under the influence of an alcoholic beverage, inhalant, or controlled substance	OUI
Driving without a valid operator's license	DVOL

³ SB 91, Section 182. This second report is due not later than December 1, 2016.

⁴ AS 28.90.010 ("Penalties for violations of law, regulations, and municipal ordinances"). Non-jailable acts in Title 28 are called "infractions."

⁵ AS 28.90.010(d).

⁶ See AS 28.15.011(b), together with 28.15.291(a)(2) and 28.90.010(b).

⁷ Before passage of SB 91, both DUI and non-DUI related DWLS penalties were more serious than DVOL penalties. Although both were misdemeanors, DWLS carried minimum-mandatory terms of imprisonment and community work hours (see former AS 28.15.29) but DVOL did not. DWLS sentences (both DUI- and non-DUI-related varieties) came under scrutiny last year during the Commission's Justice Reinvestment process. The Commission learned that DWLS sentences were significant drivers of Alaska's incarceration numbers and costs, and reforms were proposed. The result was that minimum-mandatory jail terms for DUI-related DWLS were reduced, and for the non-DUI DWLS, the misdemeanor classification was reduced to an infraction. Yet, DVOL remains a misdemeanor.

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The alcohol-related **infractions** in Title 28 include:

- Refusal of preliminary breath test, AS 28.35.031;
- Minor operating a vehicle after consuming alcohol, AS 28.35.280 ;
- Minor's refusal to submit to chemical test, AS 28.35.285; and
- Minor driving within 24 hours after being cited for alcohol/PBT offense, AS 28.35.290.

The alcohol-related **crimes** in Title 28 are:

- DUI, AS 28.35.030;
- OUI (commercial), AS 28.33.030;
- Refusal, AS 28.35.032 ;
- Refusal of a preliminary breath test by operator of commercial motor vehicles (if lawfully arrested and if the officer has probable cause for DUI), AS 28.33.031;
- Circumventing or tampering with an IID device, AS 28.15.201(d)3(B)(ii) and 11.76.140; and
- DWLS if the license status was due to a DUI or Refusal conviction, AS 28.15.291(a)(1) and (b)(1).⁸

C. The Process of Creating this Report

In the summer of 2015 the Commission created a working group to study Title 28. The Title 28 working group met nine times between the summer of 2015 and the spring of 2016. Meeting summaries can be accessed here: <http://www.ajc.state.ak.us/alaska-criminal-justice-commission/workgroup-meeting-summaries> . The working group was comprised of Commissioners and subject-matter experts. Participating commissioners included Alex Bryner, Stephanie Rhoades, Trevor Stephens, Kris Sell, Greg Razo, and former Commissioner Gary Folger. The following individuals provided important information, analysis, and data for this report: Division of Motor Vehicles staff Jayson Whiteside, Kirsten Jedlicka, Lauren Edades, Amy Erickson, Audrey O'Brian, and Nicole Tham; attorney Fred Slone; Assistant Public Defender Matt Widmer; Municipality of Anchorage prosecutor Seneca Theno; Department of Law representatives Christina Sherman and Kaci Schroeder; Partners for Progress representatives Billy Houser and Doreen Schenkenberger; Department of Public Safety Lt. David Hanson; Department of Health and Social Services/ASAP staff Susan Gravely and Alysa Wooden; Ralph Andrews, Bristol Bay Native Association; Alaska Court System General Counsel Nancy Meade and ACS Therapeutic Courts Coordinator Michelle Bartley. (Not all participants attended every meeting.)

The work group researched the issues and formulated recommendations for the Commission's consideration. The Commission considered the work group's ideas at its meeting in October of 2016.

⁸ DWLS is an infraction if it was not related to a DUI or Refusal conviction. AS 28.15.291(a)(2) and (3), (b)(2).

D. Drinking and Driving in Alaska

Alaska has a high incidence of alcohol use in its population relative to the United States as a whole. In 2014, 20.2% of Alaskan adults reported binge drinking, meaning that they had five or more drinks (men) or four or more drinks (women) on one or more occasions in the past 30 days. 9.1% engaged in heavy drinking, meaning consuming more than two alcoholic drinks (men) or more than one drink (women) each day during the past 30 days.⁹

Unintentional injuries, such as those caused by motor vehicle accidents, are highly associated with alcohol use. In Alaska, accidents are the third leading cause of death after cancer and heart disease. In 2014, 31.5% of motor vehicle fatalities in Alaska involved a driver with a BAC (Breath Alcohol Content or Concentration) of .08 grams per deciliter (g/dL) or higher.¹⁰ The average BAC for alcohol-impaired Alaska drivers involved in fatal accidents was 0.214 in 2015, compared to 0.194 nationally.¹¹ Preliminary data from 2016 shows that traffic fatalities in Alaska increased 34% in 2016 as compared with 2015, though the reasons for this are as yet unknown.¹² The national increase during the same period was 10.4%.¹³

Data from the Alaska Department of Public Safety shows that DUI/OUI arrests have been declining in Alaska since 2008. The average year-over-year drop between 2008 and 2014 was 15 percent. At the peak in 2008, 5,396 individuals were arrested for a DUI/OUI; in 2014, 2,395 adults were arrested for DUI (not including arrests for Refusals). Nationally, arrest rates have also declined but at a slower rate: in 2008, 1,483,396 individuals were arrested for driving under the influence, while in 2014, 1,117,852 individuals were arrested for driving under the influence.^{14,15}

In FY15, the Alaska Court System reported a total of 3,594 DUI cases disposed statewide. Felony DUI convictions accounted for 223 of the cases, most of them (N=166) in the Third Judicial District. The court system also reported 3,371 misdemeanor DUI convictions in FY15 (1,101 of which were Municipality of Anchorage cases).

⁹ Alaska Department of Health and Social Services and Alaska Mental Health Trust Authority. *Alaska Scorecard: Key Issues Impacting Alaska Mental Health Trust Beneficiaries* (December 2015).

¹⁰ Alaska Highway Safety Office. *State of Alaska Highway Safety Annual Report* (2015).

¹¹ NHTSA. (2016). *Fatality Analysis Reporting System (FARS) [Database]*. Retrieved from www-fars.nhtsa.dot.gov/QueryTool/QuerySection/SelectYear.aspx.

¹² Press Release: "Alaska sees 34 percent increase in motor vehicle traffic fatalities in 2016." Alaska Department of Transportation and Public Facilities, November 22, 2016. Retrieved from http://dot.alaska.gov/comm/pressbox/arch_2016/PR16-1031.shtml.

¹³ *Id.*

¹⁴ FBI. (n.d.). *Table 29 – Estimated Number of Arrests, United States, 2008*. Retrieved from https://www2.fbi.gov/ucr/cius2008/data/table_29.html.

¹⁵ FBI. (n.d.). *Table 29 – Estimated Number of Arrests, United States, 2014*. Retrieved from <https://ucr.fbi.gov/crime-in-the-u.s/2014/crime-in-the-u.s.-2014/tables/table-29>.

II. Responses to Legislative Questions

A. Is a revision of the alcohol-related offenses in AS 28 necessary?

Yes; the Commission has identified a number of areas in need of revision.

B. Should both administrative law revocation (ALR) and judicial revocation processes be maintained?

The Commission found that both the administrative and judicial revocation processes do overlap in many regards, but ultimately concluded that each serves an important and distinct function. It further concluded that the benefits of keeping both processes outweigh the drawbacks of eliminating one or the other. A summary of the Commission's findings and analysis supporting this recommendation is set out below; detailed information and analysis is set out in Appendix B.

1. Findings & Analysis

In Alaska, as in many states, the statutory authority for pre-conviction administrative license revocation (ALR) by the Division of Motor Vehicles (DMV) is limited to a short list of so-called *per se* offenses.¹⁶ Most of the administrative license revocations are the result of a DUI with an unlawful BAC (often referred to as a "*per se* DUI") or Refusal. Administrative revocation in Alaska occurs around seven days after a person is arrested, unless the person requests an administrative review before a DMV hearing officer.¹⁷

National research shows that pre-conviction administrative license revocation (ALR) for *per se* offenses is effective in reducing DUI recidivism. One major study comparing pre-conviction with post-conviction license revocation found that pre-conviction license revocation was significantly more effective.¹⁸ This is presumed to be because court proceedings are protracted compared to administrative license revocation; court revocation can only follow conviction whereas ALR is imposed soon after the arrest; and conviction by a court requires a higher standard

¹⁶ AS 28.15.165, 28.15.176, and 28.15.187.

¹⁷ See AS 28.15.165(c). If the person timely requests an administrative review, he is given a limited license to use until the hearing. At the hearing, the inquiry is limited to the issue of whether the law enforcement officer had probable cause to believe the person was DUI or committed the crime of Refusal. AS 28.16.166(g).

¹⁸ DeYoung, David. (2011). Traffic Safety Impact of Judicial and Administrative Driver License Suspension. *Countermeasures to Address Impaired Driving Offenders – Toward an Integrated Model, August 2011*. Retrieved from www.ajc.state.ak.us/acjc/dui/trbimpair.pdf#page=47

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of proof than ALR. Court-ordered revocations imposed long after the offending conduct would have a relatively diluted correctional effect. Thus, the Commission concluded that ALR serves a beneficial function.

Having concluded that ALR serves a beneficial function, the Commission considered what drawbacks are presented by pre-conviction ALR. One criticism is that ALR insufficiently protects drivers' rights. Previously under Alaska law, drivers who were acquitted or otherwise not convicted were not well served, because DMV lacked the explicit authority to reinstate a license upon acquittal or dismissal. However, in July of 2016, SB 91 amended Title 28 to require DMV to rescind any ALR if the parallel criminal case is dismissed for any reason or the defendant is acquitted.¹⁹ Moreover, the Alaska Supreme Court has affirmed that the ALR process is lawful and constitutional, though the burden of proof for administrative revocation is not as high as in criminal cases.²⁰

The Commission next considered whether judicial license revocation could be discarded if ALR were maintained. Although the Commission found instances in which licenses can be revoked by both the courts and DMV, there are a number of cases in which only courts have the authority to revoke a license.²¹ For example: only courts may revoke licenses for reckless driving or for DUI offenses that are not *per se* DUI. Also, current law allows courts the option of ordering a period of license revocation *consecutive* to the mandatory term imposed by DMV for a DUI or Refusal.²² A court-imposed mandatory IID requirement must be met as a condition of license reinstatement, while an administrative licensing revocation order does not include an IID requirement for relicensing.²³ Finally, a therapeutic court (but not the DMV) can reduce a fine or the term of a license revocation based on the defendant's compliance with a treatment program.²⁴

With or without ALR, criminal court proceedings still will be necessary because license revocation is but one of a number of penalties that the court must impose. Furthermore, the use of two processes is not much of an additional burden on state resources. A court's license revocation orders are actually effectuated by DMV. In most cases, DMV will have its revocation

¹⁹ See SB 91, Section 101, effective July 2016.

²⁰ ALR determinations based on a preponderance of evidence have universally survived constitutional challenges because: a license is considered a privilege and not a right, administrative proceedings do provide procedural and constitutional protections to the driver, especially in Alaska, and revocation can be constitutionally justified by the impacts of drunk driving on public safety. In Alaska the same procedural safeguards apply in civil driver's license revocation proceedings for driving while intoxicated as apply in criminal prosecutions for that offense. *Hartman v. State of Alaska*, 152 P.3d 1118 (Alaska 2007).

²¹ See AS 28.15.181.

²² *Id.*

²³ Both court and DMV-approved limited licenses do require IID installation.

²⁴ See SB 91, Section 101, effective July 2016.

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already in effect. The court system does expend resources notifying the DMV of a revocation order, but electronic transmissions could minimize that burden.

For these reasons, the Commission concluded that there are good reasons to maintain both judicial license revocation and ALR. Keeping both procedures may in some cases be redundant, but on the whole it is not wasteful, and eliminating one or the other would have significant drawbacks.

The Commission also considered extending ALR to all offenses under Title 28 for which mandatory judicial license revocation is required.²⁵ One identified benefit of doing so is that it would create an immediate consequence for all vehicular offenders, some of whom may have engaged in dangerous activity with a vehicle and may have access to a vehicle pre-trial. Ultimately, however, some members of the Commission were concerned that this could have the unintended consequence of creating more administrative review hearings that would essentially turn into mini-trials on the underlying charge. The Commission may revisit this topic in the future.

2. Recommendations

- **B1.** ALR should be maintained.
 - Reasoning: Maintaining both the ALR and judicial revocation systems is effective and comprehensive.
- **B2.** Elimination of courts' authority to impose mandatory license revocation is *not* recommended.
 - Reasoning: There are situations in which judicial authority extends beyond that of ALR and therefore serves a separate purpose.

Note: The above section discusses the Commission's findings and recommendations on the revocation process in general. Section D below discusses the Commission's findings regarding the length of license revocation periods.

²⁵ See AS 28.15.181; the offenses listed in this statute are: 1) manslaughter or negligent homicide resulting from driving a motor vehicle; 2) a felony in the commission of which a motor vehicle is used; 3) failure to stop and give aid as required by law when a motor vehicle accident results in the death or personal injury of another; 4) perjury or making a false affidavit or statement under oath to the department under a law relating to motor vehicles; 5) operating a motor vehicle or aircraft while under the influence of an alcoholic beverage, inhalant, or controlled substance; 6) reckless driving; 7) using a motor vehicle in unlawful flight to avoid arrest by a peace officer; 8) refusal to submit to a chemical test authorized under AS 28.33.031(a) or AS 28.35.031(a) while under arrest for operating a motor vehicle, commercial motor vehicle, or aircraft while under the influence of an alcoholic beverage, inhalant, or controlled substance, or authorized under AS 28.35.031(g); 9) driving while license, privilege to drive, or privilege to obtain a license, canceled, suspended, or revoked, or in violation of a limitation; 10) vehicle theft in the first degree in violation of AS 11.46.360 or vehicle theft in the second degree in violation of AS 11.46.365.

C. What is the effectiveness of ignition interlock devices (IIDs) in reducing the offenses of driving while under the influence of an alcoholic beverage, inhalant or controlled substance (DUI) and refusal to submit to a chemical test and reducing recidivism?

The Commission found evidence that IIDs effectively reduce recidivism during times that they are being actively and properly used; however, this effect does not continue after the IID is removed. Based on this and other information, the Commission recommends that the Legislature amend the IID requirement.

What is an ignition interlock device?

- An IID disables a car from operation by an intoxicated person by analyzing the alcohol content of the driver's breath.
- In Alaska, drivers required to use an IID pay a private vendor to install, calibrate and service the device.
- The Alaska Department of Corrections determines which interlock devices are certified for use in Alaska, and approved vendors are listed on the DOC web site.

The Commission has compiled extensive information about ignition interlocks, the research concerning their effectiveness, and law and practice in Alaska. This information is attached as Appendix C. The following findings, analysis, and recommendations are based on that information.

1. IID Findings and Analysis

Use of IIDs in Alaska. Since 2008, any person convicted of DUI or Refusal whose offense involved the use of alcohol is ordered to use an ignition interlock device for a period of time after he or she regains the privilege to drive.²⁶ A person regains the privilege to drive after a statutory revocation period ends *and* the person satisfies various other re-licensing requirements.²⁷

The amount of time a convicted offender is required to use the IID varies from six months to 60 months, depending on whether the conviction was a misdemeanor or a felony, and in some cases on the timing of the person's prior convictions. The IID requirement never expires, meaning a person's license cannot be reinstated until he or she shows proof of IID installation to the DMV.

²⁶ AS 28.35.030(b)(1); AS 28.35.030(n)(1); AS 28.35.032(g)(1); AS 28.35.032(p)(1). The court may not suspend the IID requirement. AS 28.35.030(b)(2); AS 28.35.030(n)(2); AS 28.35.032(g)(2); AS 28.35.032(p)(2). Between 1989 and 2008, courts had discretion to require IID use in DUI/Refusal cases.

²⁷ For example, completion of treatment requirements; passing written, vision and road tests; payment of DMV fees.

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IIDs also are required when a person whose license has been revoked requests a limited license. A limited license enables a person to “earn a livelihood” while not unduly endangering the public. Limited licenses are only available for offenders who are employed and enrolled in a treatment program.²⁸ Limited licenses can be requested during the period of a license revocation by certain DUI (but not Refusal) offenders.²⁹ First-time offenders may apply for a limited license to drive following 30 days of license revocation.³⁰ Second-time or higher (non-felony) offenders may apply for a limited license to drive following 90 days of license revocation.³¹ Any limited license request must be approved by a court or the DMV. If the request for the limited license is approved, the driver will be required to install an IID and show proof of installation (among other things).

Alaska law contains exemptions from the mandatory IID requirement. These include exemptions for driving an employer’s vehicle if approved in advance by a court, and for offenders in certain rural communities (due to the State’s large land area and dispersed population, offenders are not required to use an ignition interlock device if they operate a motor vehicle in certain communities, namely, communities in which car registration/insurance is not required.^{32,33}) Additionally, courts do not have to order an IID for an offender whose DUI impairment was drug-related.³⁴

The Commission examined the cost of IIDs. For a first-DUI offender, basic interlock fees are about \$700 for the period of six months. All interlock-related costs – which include installation, removal, monthly servicing, optional insurance to cover the unit, and any vendor charges for IID re-start after an alcohol lock-out – also are paid by the offender to the third-party vendor. A first-time offender also would incur additional costs (fines, surcharges, DMV fees, electronic monitoring, public counsel fee) between \$2,000-2,680, and possibly impoundment fees, forfeiture-related losses, and ASAP costs. At the point the person regains the privilege to drive, there also would be costs for SR-22 insurance (estimated at \$300/month). Thus, the direct and indirect costs of the DUI conviction, even for a first offender, are significant.

²⁸ Limitation of driver's license, Alaska Stat. § 28.15.201

²⁹ Limited licenses cannot be issued until a “no-drive period” is first observed. The length of the no-drive period (often called the ‘hard’ revocation) depends on the number of prior DUI/Refusal convictions.

³⁰ Limitation of driver's license, Alaska Stat. § 28.15.201

³¹ Limitation of driver's license, Alaska Stat. § 28.15.201

³² Motor vehicle liability insurance required; exemptions, Alaska Stat. § 28.22.011

³³ Alaska Court System. (2015). *Ignition Interlock Device Information Sheet* (CR-483). Retrieved from www.courtrecords.alaska.gov/webdocs/forms/cr-483.pdf

³⁴ A court *may* impose an IID requirement as a condition of probation when the impairment was not alcohol-related.

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A sentencing court can “include” IID costs as part of the fine.³⁵ If the court allows that option, the defendant submits receipts for the IID payments to the court by a deadline specified in the judgment, and the court applies the credit to the amount of the fine.

Unfortunately, it is unknown how many Alaskans have been ordered to install an IID.³⁶ Information from the DMV suggests that over 12,000 Alaskans currently have an IID restriction on their licenses (see discussion below). One researcher who estimates interlock installation rates for all states has estimated that there are 1,922 presently installed devices in Alaska.³⁷ That number could be compared to 3,594 convictions for DUI or Refusal in Alaska in FY2015 alone.

Strengths and Weaknesses of IIDs. The Commission examined the effects of IIDs in the following areas: effects on recidivism, effects on public safety, offenders’ compliance with IID orders, and effects on re-licensing. Each of these areas is discussed briefly below.

Effects on recidivism. Interlocks are an effective method for preventing alcohol-impaired driving *while they are installed*.³⁸ A systematic review of fifteen scientific studies conducted by the Centers for Disease Control and Prevention found that, while interlocks were installed, the re-arrest rate of offenders decreased by 67%, compared to groups that did not have the device installed.³⁹ Thus, the benefit of the IID requirement in Alaska may be reduced recidivism for offenders who install and drive with the devices, during the period that they are installed.

There is insufficient evidence to show that interlock devices deter future behavior when they are no longer in use. With one notable exception, studies have generally shown that after ignition interlocks were removed, any recidivism reduction effect disappeared, and interlock and comparison drivers had similar recidivism rates thereafter.⁴⁰

Effects on public safety. IID use does not seem to have a positive effect on the rate of motor vehicle accidents. Evidence from other states suggests that offenders with installed ignition interlock devices tend to have more vehicle accidents than persons with suspended licenses, but

³⁵ AS 12.55.102(d).

³⁶ The court system does not track the number of individuals convicted of alcohol-involved offenses who were ordered to have an interlock installed.

³⁷ Roth, Richard. (2013). *2013 Survey of Currently-Installed Interlocks in the U.S.* Retrieved from www.rothinterlock.org/2013_survey_of_currently_installed_interlocks_in_the_us_revised-12_17_13.pdf

³⁸ See discussion in Appendix C at page 3.

³⁹ See discussion in Appendix C at page 3.

⁴⁰ See discussion in Appendix C at page 3. There is promising evidence elsewhere that recidivism may be reduced when IID use is coupled with treatment and consistently and closely monitored with immediate feedback and consequence for non-compliance; however, Alaska’s IID requirement is not coupled with treatment and offenders who do not comply are not monitored.

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about the same number of vehicle accidents as the general public.^{41,42} It is unknown if this situation exists in Alaska.

Compliance with IID orders. The Commission has concluded that relatively few offenders who are ordered to install an IID actually do so. In Alaska, no one entity tracks the number of persons who have failed to install or comply with interlock requirements,⁴³ but according to a 2012 study of the Alaska ignition interlock program, a 'majority' of eligible offenders either "fail to have the interlock ordered by the courts or fail to install the device even if they receive a judicial order to do so."⁴⁴ This estimate is consistent with information from the Alaska DMV that there are 12,784 living drivers with an unsatisfied interlock restriction on their license. (A license would be flagged with an unsatisfied interlock restriction when the driver's license was revoked and put under an IID restriction.) In other words, 12,784 living Alaskans are currently foreclosed from license reinstatement due to an outstanding interlock requirement. While some of these 12,784 drivers may be driving on a DMV-issued interlock-restricted license, many (if not most) are not.

The Commission also learned that there is no formal oversight of those who do have IIDs installed. IID program participants are required to submit their device for inspection and recalibration every 90 days to the third-party IID vender, but there is no system in place to monitor this data or to track "lockouts." Additionally, offenders who do install the devices may tamper with them or evade using them. Commission members heard anecdotal stories of offenders who install a device on a car which they then park while they drive a different car.

Effects on re-licensing. The mandatory IID requirement as it is used in Alaska may have discouraged many offenders from re-licensing. Because the IID predicate for license reinstatement never expires, an offender cannot re-license without showing proof of IID installation to the DMV. Offenders who do not re-license remain outside of the driver-control system, making corrective action difficult if their driving continues to be a problem.⁴⁵

⁴¹ See discussion in Appendix C at page 4.

⁴² See discussion in Appendix C at page 4.

⁴³ The courts do not track what number of individuals convicted of alcohol-involved offenses were ordered to have an interlock installed, and DMV does not know how many records once had an interlock-restriction, since it did not keep track of those records once the requirement was fully satisfied.

⁴⁴ Traffic Injury Research Foundation. (2012). Alcohol Interlock Program Technical Assistance and Training: Alaska. Ottawa, Ontario: Traffic Injury Research Foundation.

⁴⁵ The Traffic Injury Research Foundation has noted "Between 25% and 75% of offenders who have a driver's license that is suspended or revoked continue to drive, making it likely that they will continue to drink and drive and be a danger on the roadways." McCartt et al., 2003; Ross and Gonzales, 1988; Griffing III and De La Zerda, 2000.

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The Commission estimates that as many as 60% of Alaska offenders may not be reinstating their driving privileges.⁴⁶ Based on the large number of Alaska driver records (12,784 living persons) showing unsatisfied interlock restrictions, researchers' estimates of installed interlocks, estimates of the percentage of Alaskan drivers who failed to reinstate licenses after revocation,⁴⁷ and the experience of other states,⁴⁸ the Commission assumes that the mandatory predicate of an IID for license reinstatement discourages many individuals from license reinstatement even after the end of a revocation period.⁴⁹

Based on the above information, the Commission concludes:

- The existing statutory scheme of mandated IID use does not effectively protect public safety because:
 - Attempts to operate a vehicle that results in a "lock-out" are not remotely monitored, promptly documented or actively reported to an oversight agency by an IID vendor;
 - The IID does not monitor a driver when he or she is not driving the vehicle on which the device is installed. This contrasts with other remote monitoring technologies which continuously monitor in real-time, or allow for a near-immediate response.
- The penalty and license reinstatement criteria are applied inconsistently:
 - IID participation is not required in some rural Alaskan communities; also, IID participation is not required for drivers whose DUI occurred on certain federal lands and federal reservations;
 - IID use cannot be ordered as a re-licensing requirement when the license revocation for DUI/Refusal was only administrative (ALR) and not judicial;

⁴⁶ Alaska DMV: 1312 (the number of drivers who reinstated their licenses following an ignition interlock device requirement in 2014) divided by 3276 (the number of DMV administrative revocations resulting from a DUI in 2013).

⁴⁷ See discussion in Appendix A at pages 8-9.

⁴⁸ Nationally, the proportion of convicted offenders who do install interlocks is low. Across the 28 states whose ignition interlock program were surveyed by NHTSA, the ratio of interlocks in use to DWI arrests in 2010 ranged from 3 percent to 73 percent with the median State at 17 percent. Casanova-Powell, T., Hedlund, J., Leaf, W., & Tison, J. (2015, May). *Evaluation of State ignition interlock programs: Interlock use analyses from 28 States, 2006–2011*. (Report No. DOT HS 812 145). Washington, DC: National Highway Traffic Safety Administration, & Atlanta: Centers for Disease Control and Prevention. Retrieved from www.nhtsa.gov/staticfiles/nti/pdf/812145-EvalStateIgnitionInterlockProg.pdf

⁴⁹ There is no financial assistance program in Alaska for indigent drivers to regain their license. Although court fines may be offset by documented costs for IID installation and service, there is no assistance for the costs of court-ordered treatment, also another predicate for license reinstatement.

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- DMV lacks statutory authority to require IID use for reinstatement after an ALR for DUI (except as a condition for a limited license during the term of revocation);
- IID is not mandatory for drug-involved DUIs (as the device has no capacity to register drug use or impairment), and the number of drug-involved DUIs is increasing.
- The IID requirement burdens the way back to lawful licensed and insured driving for some Alaskans:
 - Drivers who do not own a car still must show that an IID has been installed on some car in order to be re-licensed.
 - IIDs are expensive (for a first DUI offender the cost is between \$675-950, and for a second DUI the cost is \$1275-1550), and no financial aid is available for indigent offenders.

For all these reasons, the Commission has concluded that the existing IID process is flawed. The Commission considered a recommendation to eliminate IID installation as a mandatory sentence component or condition of probation, leaving it up to the discretion of judges. Ultimately, however, the Commission was not comfortable making this change; there was interest in reforming the process to ensure that it would “police the person, not the car.” The Commission may revisit this topic and make further recommendations in the future.

The Commission also considered recommending that judges be given the discretion to set IID installation as a condition of bail in DUI cases, but some expressed concern that this may lead to “overprogramming” for low-level offenders. The Commission may revisit this topic as well.

2. IID Recommendations

Based on the above findings and analysis, the Commission makes the following recommendations regarding interlock ignition devices:

- **C1.** Provided the full term of license revocation has been completed and the person is otherwise fully eligible for reinstatement, DMV should not require IID use as a predicate for license reinstatement unless it has been ordered by the court.
 - Reasoning: Some offenders may choose not to apply for a limited license during the revocation period; once they have completed that period they are not required to apply for a limited license and therefore should not be required to have an IID installed—unless a court so orders.

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- **C2.** Retain installation of an IID (or a comparable device) as a prerequisite for approval of limited licenses during the pendency of a revocation period.
 - Reasoning: IIDs are effective in reducing recidivism while properly installed and in use, and the subset of drivers who apply for limited licenses during the period of revocation may be more likely to comply than other convicted offenders.
- **C3.** Add an option to permit approval of limited licenses for drivers who are using remote continuous alcohol monitoring technologies (such as a Secure Continuous Remote Alcohol Monitor (SCRAM) device).⁵⁰
 - Reasoning: Because SCRAM devices monitor the person's alcohol consumption at all times, the person will be less able to evade detection than drivers ordered to use IIDs (who may be able to drive a different car without an IID installed).

D. Sanctions

The Legislature asked the Commission to answer the following questions regarding sanctions in Title 28:

- Should the punishments, fines and associated driver's license revocation periods (for all Title 28 offenses) be maintained?
- What is the effectiveness of the penalties, fines, and reformatory and rehabilitative measures under state law for the offenses of driving while intoxicated, refusal to submit to a chemical test, and driving without a valid driver's license?
- Do the penalties, fines, and reformatory and rehabilitative measures under state law for the offenses of driving while under the influence, refusal to submit to a chemical test, and driving without a valid driver's license reduce recidivism, promote rehabilitation and protect the public?

Generally speaking, Title 28 offenses are punishable by imprisonment, probation, fines and license revocations.⁵¹ The next sections will discuss each type of sanction in turn, with recommendations following each discussion. For historical reference, Appendix A contains a summary of changes to Title 28 enacted in SB 91.

⁵⁰ A SCRAM device is an ankle bracelet that provides continuous alcohol monitoring via transdermal alcohol testing.

⁵¹ Infractions are punishable only by a fine or other low-level sanctions that do not suggest criminality or involve loss of a valuable license because infractions do not give rise to constitutional protections of jury trial or indigent representation. Title 28 infractions include DWLS not arising from a DUI conviction, the refusal of a preliminary breath test; minor operating a vehicle after consuming alcohol; a minor's refusal to submit to a chemical test; and a minor's driving within 24 hours after being cited for an alcohol/PBT offense.

1. Imprisonment and Probation

The following is an overview of imprisonment and probationary terms for Title 28 offenses—including recent changes to the law in this area following the enactment of SB 91.

A first conviction for either DUI or Refusal is a Class A misdemeanor. Generally, first-time convictions for Class A misdemeanors carry a sentence of up to 30 days, with no mandatory minimum, and the maximum fine is \$25,000 (with no minimum).⁵² However, DUI and Refusal have more specific provisions, requiring a mandatory minimum term of imprisonment of 72 hours for the first conviction. (Though this is the same minimum term as before SB 91, offenders will now serve this term on electronic monitoring.⁵³) A first-time DUI or Refusal conviction also carries a mandatory minimum license revocation of 90 days, and a mandatory minimum fine of \$1,500.⁵⁴

The second offense, also a Class A misdemeanor, carries a mandatory minimum term of imprisonment of 20 days, a mandatory minimum license revocation of 12 months, and a mandatory minimum fine of \$3,000.⁵⁵ A third conviction for either offense generally qualifies as a felony.⁵⁶

For a first-time DUI offender, 27 states require no minimum mandatory sentence. Of the remainder, 14 states have sentences of 1-2 days, 3 states (including Alaska) have 3-day sentences, Nebraska has a 7-day minimum and Arizona has 10. (Many states do require higher minimum sentences than Alaska's if a first offender has a high BAC.) For a second DUI offender, minimum-mandatory sentences among the states range from 0-180 days. The median is 7 days. Alaska's minimum mandatory sentence for a second offender is 20 days.

In addition to terms of imprisonment, most sentences will also carry terms of probation. Under SB 91, maximum probation terms were reduced from 10 years to 1 year for a first misdemeanor offense.⁵⁷ In cases of DUI or Refusal, a second or subsequent misdemeanor will carry a maximum 2 years of probation.⁵⁸

⁵² See SB 91, Sections 72 & 91.

⁵³ See SB 91, Sections 107 & 110. In communities where EM is not available, sentences may be served in private residences by any other means approved by the commissioner of corrections.

⁵⁴ AS 28.35.030(b)(1); AS 28.35.032(g)(1); AS 28.15.181(c)(1).

⁵⁵ See AS 28.35.030(b)(1); AS 28.35.032(g)(1); AS 28.15.181(c)(2).

⁵⁶ See AS 28.35.030(n); AS 28.35.032(p).

⁵⁷ See SB 91, Section 79.

⁵⁸ *Id.*

Minimum mandatory applicable terms for misdemeanor DUI/OUI/Refusal			
# DUI/OUI/ Refusal	Minimum Jail Term	Maximum Jail Term	Maximum Probation term
1 st	72 hours	1 year	1 year
2 nd	20 days	1 year	2 years
3 rd within 15 years	60 days	1 year	2 years
4 rd within 15 years	120 days	1 year	2 years
5 th within 15 years	240 days	1 year	2 years
6 th within 15 years	360 days	1 year	2 years

DUI and Refusal are also felony offenses, if the offense is the third such offense for the driver within the past 10 years.^{59,60} Felony DUI and Felony Refusal are Class C felonies with sentence ranges that increase for each subsequent offense (see table below).⁶¹ As Class C felonies, these offenses are subject to a maximum jail term of 5 years, and a maximum probation term of 5 years.⁶²

Applicable terms for Felony DUI/OUI/Refusal			
# DUI/OUI/Refusal	Sentencing Range	Maximum Jail Term	Maximum Probation Term
3 rd within 10 years	120-239 days	5 years	5 years
4 th within 10 years	240-359 days	5 years	5 years
5 th within 10 years	360 days – 2 years	5 years	5 years

DWLS (driving with a canceled, suspended, revoked or limited license) is also a class A misdemeanor but only if the license action related to a DUI/Refusal conviction.⁶³ Under SB 91, a first offense now warrants a mandatory ten-day suspended sentence, and a second offense requires a ten-day minimum sentence. As with other misdemeanor offenses, the maximum probation term (previously ten years) is now one year. Prior to SB 91's enactment, this offense required a minimum 20 day/10 day suspended sentence for the first offense and 30 days for a second offense.⁶⁴

⁵⁹ AS 28.35.030(n)

⁶⁰ AS 28.35.032(p)

⁶¹ SB 91, Section 90.

⁶² AS 12.55.125(e); SB 91 Section 79.

⁶³ AS 12.55.135(a); SB 91 Sections 104 & 105.

⁶⁴ Former AS 28.15.291.

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A maximum sentence of one year is available for the class A misdemeanor of circumventing or tampering with an IID device, see AS 28.15.201(d)3(B)(ii). No mandatory minimum applies. As with other misdemeanor offenses, the maximum probation term is one year.

A maximum jail term of 90 days applies to the class B misdemeanor crimes of (Commercial Operator's) Refusal to Submit to a Preliminary Breath Test. The 90-day maximum term also applies to DVOL⁶⁵ (driving without a valid operator's license).⁶⁶ These maximum terms are in contrast to the 10-day maximum jail term for most other class B misdemeanors.⁶⁷ No mandatory minimums apply to these offenses. As with other misdemeanor offenses, the maximum probation term is one year.

Though the classification and maximum term for a non-DUI-related DVOL remains the same, non-DUI-related DWLS has been reduced to an infraction punishable by a maximum fine of \$300.⁶⁸

In summary, SB 91 made the following changes to Title 28 offenses and associated jail and probationary terms:

- DWLS offenses *not* based on DUI or Refusal are now non-jailable infractions.
- First-time DWLS based on DUI or Refusal now carries a 10-day suspended term; second-time DWLS based on DUI or Refusal now carries a 10-day minimum.
- First-time DUI or Refusal misdemeanors carry the same sentence, but the sentence will be served on electronic monitoring.
- Probation for a first-time DUI or Refusal misdemeanor is 1 year; probation for a second or subsequent DUI or Refusal misdemeanor is 2 years; probation for a felony is 5 years.

Otherwise, the jail terms that apply only to Title 28 offenses have been left unchanged. The Commission's past research on the recidivism effects of jail on DUI offenders shows that jail sentences for first offenders were associated with higher recidivism rates than both probation and community work service,⁶⁹ even when controlling for socio-economic differences between

⁶⁵ A maximum jail term of 90 days applies to DVOL (driving without a valid operator's license). AS 28.15.011(b) is read together with 28.15.291(a)(2) and 28.90.010(b) to establish this violation and its penalties. DVOL is a misdemeanor, punishable by a maximum 90 days in jail, a \$500 fine and a potential license revocation

⁶⁶ AS 28.33.031.

⁶⁷ See AS 28.90.010(b).

⁶⁸ SB 91 Sections 104 & 105.

⁶⁹ Michael Bachmann and Ashford L. Dixon. 2014. "DWI Sentencing in the United States: Toward Promising Punishment Alternatives in Texas." *International Journal of Criminal Justice Sciences* 9.

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offender groups. This finding is also consistent for offenders with multiple prior DUI convictions.⁷⁰ No matter how many past convictions, sanctions involving jail were associated with the highest recidivism rates. The available evidence is that as a specific deterrent, jail terms are extremely costly and no more effective in reducing DUI recidivism among either first time or repeat offenders than are other sanctions.⁷¹

Though the research would support reducing jail terms for DUI and related offenses, the changes listed above already represent a sizable shift in approaching Title 28 sanctions. Therefore, the Commission is of the opinion that no additional changes should be recommended at this time for the offenses of DUI/OUI/Refusal, DWLS based on a DUI revocation, circumventing or tampering with an IID device, or refusal of a PBT by a commercial operator. Rather, the Commission will first evaluate the impact of the changes resulting from SB 91's enactment and recommend further changes in the future if necessary.

2. Fines

The Commission has compiled data on all applicable fees as a result of a Title 28 conviction in the table below. The table does not include any losses due to possible forfeiture actions or municipal impoundment fees, nor the separate, additional costs for license reinstatement.

Misdemeanor DUI/OUI/Refusal						
	1 st	2 nd	3 rd	4 th	5 th	6 th
Minimum mandatory fine	\$1,500	\$3,000	\$4,000	\$5,000	\$6,000	\$7,000
General fund surcharge based on conviction ⁷²	\$75 or \$50 if municipal					
Correctional facility surcharge if brought to a jail for arrest or service of sentence ⁷³	\$75					
Cost of imprisonment ⁷⁴ or EM for sentence	Jail \$330	\$1,467	\$2,000			
	EM \$36/\$78					
Cost of appointed counsel ⁷⁵	Plea \$200; trial \$500; post-conviction \$250					
ASAP cost	\$200					

⁷⁰ David J. DeYoung. 1997. "An evaluation of the effectiveness of alcohol treatment, driver license actions and jail terms in reducing drunk driving recidivism in California." *Addiction* 92.

⁷¹ A Guide to Sentencing DWI Offenders (2005), NHTSA Guide to Sentencing DWI Offenders 2005 HS 810 555, citing multiple studies.

⁷² AS 12.55.039(a)-(d) ("Surcharge").

⁷³ AS 12.55.041 ("Correctional Facility Surcharge") Applies if person was (1) was arrested and taken to a correctional facility, regardless of whether the defendant was released or admitted to the facility; or (2) is sentenced to serve a term of imprisonment.

⁷⁴ AS 28.35.030(l) and 22 AAC 05.615 (e).

⁷⁵ Rules of Criminal Procedure, Rule 39(d) Schedule of Costs.

Felony DUI/Refusal	
Minimum mandatory fine	\$10,000
General fund surcharge based on conviction ⁷⁶	\$100
Correctional facility surcharge if brought to a jail for arrest or service of sentence ⁷⁷	\$100
Cost of imprisonment ⁷⁸ or EM for sentence	\$2000
Cost of appointed counsel	Plea \$250-\$1000, Trial \$1,500 Post-conviction \$250

As noted above, the maximum fine for any A misdemeanor is \$25,000, while the maximum fine for any C felony is \$50,000.⁷⁹ DVOL also carries a fine of \$500. DWLS, as revised by SB 91, carries no minimum fine, though the misdemeanor-level DWLS carries a maximum fine of \$25,000.

At \$1500, Alaska has the single highest minimum mandatory fine for a first DUI offense, 4.7 times the national average. A survey of all 50 states and the District of Columbia by WalletHub provides a median of \$250 and a mean of \$317 for states' minimum-mandatory fines for a first-time DUI. Thirteen states require no minimum fine.⁸⁰

At \$3000, Alaska also has the highest mandatory fine among all states and D.C. for a second-DUI offense, 4.5 times the national average. Among all fifty states and D.C., there is a \$500 median and a mean of \$667.

WalletHub also states that, after a DUI in Alaska, there is an average 80% increase in car insurance rates, which is the fourth-highest reported increase in the country.

⁷⁶ AS 12.55.039(a)-(d) ("Surcharge").

⁷⁷ AS 12.55.041 ("Correctional Facility Surcharge") Applies if person was (1) was arrested and taken to a correctional facility, regardless of whether the defendant was released or admitted to the facility; or (2) is sentenced to serve a term of imprisonment.

⁷⁸ AS 28.35.030(l) and 22 AAC 05.615 (e).

⁷⁹ SB 91, Section 72.

⁸⁰ There are also sharp contrasts within our own state borders. For DUI cases prosecuted in federal court under the Assimilative Crimes Act (in the National Parks), no minimum fine is required. There is a maximum \$5000 fine, but it is more typical for a fine of \$150 to be imposed.

DUI Penalties Among Western States ⁸¹			
State	Min. fine 1 st DUI	Min. fine 2 nd DUI	Reported percentage increase in auto insurance after DUI
Alaska	1500	3000	80%
Arizona	250	500	37%
California	390	390	103%
Colorado	600	600	34%
Montana	300	600	39%
Nevada	400	750	29%
Oregon	1000	1500	26%
Utah	1370	1560	39%
Washington	940.50	1195	28%

One study from Australia in 1981 supports the recidivism-reduction effect of higher fines (\$300 plus) versus lower fines⁸²; however, the literature is largely silent on thresholds at which sanctions become effective, are most effective, and cease to be effective (or become counter-productive).

Moreover, a comprehensive study of 26 states between 1976 and 2002 concluded that mandatory fine penalties do not have clearly demonstrable general deterrent or preventive effects, especially in contrast to two other DUI countermeasures: (1) administrative drivers' license suspension for DUI and (2) reductions in the legally allowable BAC limit for driving – which show fairly consistent effects in reducing alcohol-related crash involvement.⁸³

Because Alaska's fines are generally higher than those in other states, the evidence is silent on how much of a fine has a positive and not counter-productive impact, the fines and other conviction costs are heavy burdens to an Alaska DUI offender, and the fines may discourage license reinstatement, the Commission considered recommending a reduction in fines. The Commission also considered that outstanding fines may be suspended in whole or in part for first and second DUI's on condition of license reinstatement. But it was noted that the DUI arrest rate

⁸¹ <https://wallethub.com/edu/strictest-states-on-dui/13549/#adam-gershowitz>

⁸² Homel, R 1981, 'Penalties and the drinkdriver: a study of one thousand offenders', Australian and New Zealand Journal of Criminology, vol. 14, pp 225-241.

⁸³ Wagenaar, A., M. Maldonado-Molina, D. Erickson, L. Ma, A. Tobler, and K. Komroa, "General deterrence effects of U.S. statutory DUI fine and jail penalties: Long-term follow-up in 32 states." *Accident Analysis and Prevention* 39 (2007) 982-994.

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had been declining under the current fine structure, so the Commission decided not to recommend any changes to fines at this time.

The Commission also considered allowing defendants to offset their out-of-pocket substance abuse treatment costs against their court-ordered fines. (This practice is already allowed by the Municipality of Anchorage.) Defendants may already offset the cost of their IIDs against their fines. But it was noted that this may actually place more of a burden on some low-income offenders whose treatment may be paid for by the Indian Health Service or Medicaid.

The Commission may return to the topic for further discussion in the future.

3. License revocation periods for DUI/Refusal offenders

As discussed in Section B above, license revocation may be imposed as an administrative sanction (ALR) or as a criminal sanction (judicial revocation). While research shows that license revocation is an effective mechanism for reducing recidivism, the research is less conclusive on the optimal length of time for a revocation.

Research indicates that the penalties of license suspension or revocation can be effective in deterring a DUI offender from re-offending. Studies of license suspension have demonstrated its effectiveness in reducing recidivism and the risk of crash involvement among drinking drivers.⁸⁴ More recent surveys also indicate that license suspension works to control the overall traffic safety risk of first and repeat DUI offenders.⁸⁵ Evidence has shown that "license suspension can lead to reform beyond the period of suspension, especially when combined with some form of education or treatment."⁸⁶

(One caveat on national research: researchers often uses the terms "suspension" and "revocation" interchangeably, but suspension suggests fewer requirements for the reinstatement of unrestricted driving privileges. States' laws requiring "revocation" and "suspension" may not

⁸⁴ Mann, R. E.; Vingilis, E. R.; Gavin, D.; Adlaf, E.; and Anglin, L. "Sentence severity and the drinking driver: Relationships with traffic safety outcome." *Accident Analysis and Prevention*, 23(6):483-491, 1991; McKnight, J, and R. Voas, "The effect of license suspension upon DWI recidivism." *Alcohol, Drugs & Driving*, Vol 7(1), Jan-Mar 1991, 43-54; Ross, H. L. "License deprivation as a drunk-driver sanction." *Alcohol, Drugs and Driving*, 7(1):63-70, 1991; Sadler, D. D.; Perrine, M. W.; and Peck, R. C. "The long-term traffic safety impact of a pilot alcohol abuse treatment as an alternative to license suspension." *Accident Analysis and Prevention*, 23(4):203-224, 1991; Rodgers, A. "Effect of Minnesota's license plate impoundment law on recidivism of multiple DWI violators." *Alcohol, Drugs and Driving*, 10(2):127-134, 1994; Williams, A. F. "The effectiveness of legal countermeasures against alcohol-impaired driving." In A. B. Bergman (Ed.), *Political approaches to injury control at the state level* (pp. 17-26). Seattle, Washington: University of Washington Press, 1992.

⁸⁵ DeYoung, D. "Traffic Safety Impact of Judicial and Administrative Driver's License Suspension." *Countermeasures to Address Impaired Driving Offenders: Toward an Integrated Model*. Transportation Research Board. August 2013.

⁸⁶ Ross, H. L. "License deprivation as a drunk-driver sanction." *Alcohol, Drugs and Driving*, 7(1):63-70, 1991; NHTSA. (January 2006). *A Guide to Sentencing DWI Offenders, 2nd Edition 2005*. Washington, DC: NHTSA (DOT HS 810 555). Retrieved from <http://www.nhtsa.gov/people/injury/alcohol/DWIOffenders/>

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necessarily foreclose all lawful driving; limited, hardship, employment-related, or interlock-restricted licenses are often made available during a revocation or suspension period on a conditional basis. Thus multi-state research may not consider uniform policies, and the policies considered may not be identical to Alaska's.)

Critically, the optimal length of revocation periods is yet to be conclusively established by research. An Australian study from 1981 suggests that suspension periods between 12 and 18 months may be optimal for reducing DWI recidivism⁸⁷, but there is limited utility in comparing this to Alaska in 2016. A more recent study suggests that shorter license revocation periods may be more effective because longer periods can 'teach' a person that it is relatively easy to drive, unlicensed, without being apprehended.⁸⁸ More research is needed on minimum periods necessary to obtain and maintain the benefits obtained from license revocation.

Indeed, driving with a suspended or revoked license is problematic, although for unknown reasons. Comparing offenders with a suspended license to fully licensed drivers, "suspended offenders have 3.7 times the risk being at fault in a fatal crash."⁸⁹ Furthermore, Griffin III and DeLaZerda (2000) "found that 20 percent of all fatal crashes between 1993 and 1997 involved at least one improperly licensed driver or a driver with a suspended or revoked license."⁹⁰

Alaska's revocation periods range from a minimum of 90 days to a lifetime revocation. (See table below.) Courts may impose a revocation period greater than the mandatory minimum. The Court of Appeals has interpreted AS 28.15.181(c) as allowing courts the discretion to order up to a lifetime revocation of a driver's license in a misdemeanor case.⁹¹ Mandatory minimum periods cannot be reduced by DMV nor by the courts with limited exceptions for license reinstatement after three years in certain circumstances.⁹²

⁸⁷ Homel, R 1981, 'Penalties and the drinkdriver: a study of one thousand offenders', Australian and New Zealand Journal of Criminology, vol. 14, pp 225-241.

⁸⁸ DeYoung, D. "Traffic Safety Impact of Judicial and Administrative Driver's License Suspension." Countermeasures to Address Impaired Driving Offenders: Toward an Integrated Model. Transportation Research Board. August 2013.

⁸⁹ McKnight, A.S., Watson, D.E., Voas, R.B., & Fell, J.C. (2008). *Update of Vehicle Sanction Laws and Their Application: Volume II – Vehicle Sanctions Status by State* (DOT HS 811 028B). Washington, DC: National Highway Traffic Safety Administration. Retrieved from <http://www.nhtsa.gov/DOT/NHTSA/Traffic%20Injury%20Control/Articles/Associated%20Files/811028b.pdf>

⁹⁰ Griffin III, L. I., and DeLaZerda, S. "Unlicensed to kill." Washington, DC: AAA Foundation for Traffic Safety, 2000, June; NHTSA. (January 2006). *A Guide to Sentencing DWI Offenders, 2nd Edition 2005*. Washington, DC: NHTSA (DOT HS 810 555). Retrieved from <http://www.nhtsa.gov/people/injury/alcohol/DWIOffenders/>

⁹¹ *Dodge v. Anchorage*, 877 P.2d 270 (Alaska App. 1994).

⁹² SB 91, Section 109.

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For DUI misdemeanors, the revocation period is actually broken into two periods: a “hard” revocation period where the offender may not have any license to drive, and a subsequent “soft” period where the offender may be granted a limited license after meeting certain requirements.⁹³

The following table illustrates the post- SB 91 minimum-mandatory terms of license revocation for misdemeanor DUI/Refusal offenders.

Minimum-Mandatory Revocation Periods, Limited License and IID Use			
# Misdemeanor DUI/Refusal	Overall Revocation Period (Mandatory)	“Hard” revocation period, after which most DUI (but not Refusal) offenders may seek a Limited License	Accompanying Minimum Period of IID Use Required if Limited License is approved
1 st	90 days	30 days	6 months
2 nd	1 year	90 days	12 months
3 rd	3 years	90 days	18 months
4 th	5 years	90 days	24 months
5 th	5 years	90 days	30 months
6 th	5 years	90 days	35 months

For felony DUI offenses, the revocation is permanent. However, an exception is available for felony offenders to obtain limited licenses if they participate in therapeutic court. Current law allows for a license to be fully reinstated after a three year period of limited licensure, or after a 10-year period without any additional driving-related offenses.⁹⁴

The Commission considered recommending reductions in the overall revocation period for first-time offenders and reductions in the “hard” revocation period for repeat offenders. The intent of such a change was to help offenders stay employed in jobs that required the offender to drive. However, the Commission has decided to wait to see what the effects of the changes enacted by SB 91 will have before making recommendations in this area.

There is a discrepancy in the law’s treatment of DUI and Refusal offenders in the revocation process. Currently, for Refusal offenders, there can be no limited license at any time during the period of revocation. Prior law allowed for limited licenses for misdemeanor DUI offenders, but not refusal offenders (and SB 91 left this unchanged). SB 91 extended limited license eligibility to

⁹³ Under 28.15.201(d) limited license privileges are available for DUI offenders if the person is in compliance with ignition interlock requirements, is enrolled in and is in compliance with or has successfully completed the ASAP requirements, provides proof of insurance, and has not previously been convicted of violating the limitations of an ignition interlock limited license or been convicted of violating the provisions of AS 28.35.030 or 28.35.032 while on probation for a violation of those sections.

⁹⁴ SB 91, Sections 103 & 109.

certain DUI felony offenders, but not to Refusal felony offenders.⁹⁵ The Commission is unaware of any reason for this discrepancy.

Recommendations

With respect to the mandatory minimum revocation terms, the Commission recommends:

- **D1.** Refusal offenders should also be approved for limited licenses.
 - Reasoning: The Commission is unaware of evidence that Refusal offenders are any more likely to recidivate than any other class of DUI offender.
- **D2.** Current ignition interlock restrictions should still apply for any limited license approved during a revocation period, except that interlock requirements could be alternatively satisfied by remote transdermal monitoring or a 24/7 program.
 - Reasoning: Limited licensees require greater supervision and, as noted in Section C above, SCRAM or other monitoring may be more effective than IID.

E. Are there effective programs that promote offender accountability, emphasize swift and certain, yet measured punishment, reduce recidivism, and maximize the offender's ability to remain productive in society?

There are a number of national models for programs that promote accountability and rehabilitation by combining sanctions with monitoring and treatment. Treatment approaches that work best use multiple strategies, such as education in conjunction with therapy and aftercare.⁹⁶ The more severe the problem the more intensive the needed treatment.⁹⁷

Many of these national models have been replicated in Alaska. Initial studies of the effectiveness of these Alaska programs have concluded that they are promising, though these programs have yet to be rigorously studied. Currently, Alaska's Results First Initiative⁹⁸ is undertaking an evaluation of a wide range of programs in Alaska that serve individuals involved in the criminal

⁹⁵ *Id.*

⁹⁶ NHTSA. (January 2006). *A Guide to Sentencing DWI Offenders, 2nd Edition 2005*. Washington, DC: NHTSA (DOT HS 810 555). Retrieved from <http://www.nhtsa.gov/people/injury/alcohol/DWIOffenders/>

⁹⁷ NHTSA. (January 2006). *A Guide to Sentencing DWI Offenders, 2nd Edition 2005*. Washington, DC: NHTSA (DOT HS 810 555). Retrieved from <http://www.nhtsa.gov/people/injury/alcohol/DWIOffenders/>

⁹⁸ A project of the national Pew-MacArthur Results First Initiative (<http://www.pewtrusts.org/en/projects/pew-macarthur-results-first-initiative>).

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justice system.⁹⁹ The Results First Initiative is in the process of analyzing the data it has gathered concerning program costs and recidivism rates; once that analysis is complete it will run a cost-benefit analysis to help Alaska's policy makers further evaluate the effectiveness of these programs.¹⁰⁰

The programs discussed in this section are organized into three broad categories: probation programs, monitoring programs, and therapeutic courts.

1. Probation programs

a. Intensive supervision programs

In intensive supervision programs (ISP), offenders have more contact with probation officers compared with standard (nonintensive) probation programs and participate in various educational and therapeutic programs in the community.¹⁰¹ One NHTSA-sponsored evaluation examined the Milwaukee County Pretrial Intoxicated Driver Intervention Project (of which ISP was a component) and found that "significantly fewer offenders who received ISP recidivated compared to those who did not receive the program (5.9 % versus 12.5%)." ¹⁰²

All three ISPs evaluated in another study indicated "significant reductions in medium-term recidivism for ISP offenders up to 4 years (although one of the findings may have been due to an artifact in the comparison offender group,¹⁰³ and the effect has disappeared by 15 years)." ¹⁰⁴ The reductions in recidivism ranged from 18.1% to 54.1%. The study concluded that "the evidence appears to be strong that ISPs with the following common features can be very effective:

1. Screening and assessment of offenders for the extent of their alcohol/substance abuse problem.

⁹⁹ Valle, A., and B. Myr Stol, "Alaska Results First Initiative: Progress Report & Initial Findings." July 15, 2016. Alaska Justice Information Center. Retrieved from: https://www.uaa.alaska.edu/academics/college-of-health/departments/justice-center/alaska-justice-information-center/_documents/2016-07-15.results_first_progress_report.pdf

¹⁰⁰ *Id.*

¹⁰¹ Harding, W. M. "User's guide to new approaches and sanctions for multiple DWI offenders." DOT HS 807 571. Springfield, VA: National Highway Safety Administration/National Technical Information Service, 1989; Transportation Research Board (TRB). "Strategies for dealing with the persistent drinking driver," Transportation Research Circular 437. Washington, DC: National Research Council, 1995.

¹⁰² Jones, R. K.; Wiliszowski, C. H.; and Lacey, J. H. "Evaluation of alternative programs for repeat DWI offenders." DOT HS 808 493. Washington, DC: National Highway Traffic Safety Administration, Office of Program Development and Evaluation, 1996; NHTSA. (January 2006). *A Guide to Sentencing DWI Offenders, 2nd Edition 2005*. Washington, DC: NHTSA (DOT HS 810 555). Retrieved from <http://www.nhtsa.gov/people/injury/alcohol/DWIOffenders/>

¹⁰³ A study or measurement error may have excluded potential ISP cohort members who recidivated quickly, resulting in a survival curve shifted six months relative to the comparison group – and, as a result, statistically significant.

¹⁰⁴ Wiliszowski, C. H., Fell, J. C., McKnight, A. S., Tippetts, A. S., & Ciccel, J. D. (2010). *An Evaluation of Three Intensive Supervision Programs for Serious DWI Offenders. Annals Of Advances In Automotive Medicine*. Accessed from www.nhtsa.gov/staticfiles/nti/pdf/811446.pdf.

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2. Relatively long-term, close monitoring and supervision of the offenders, especially for alcohol and other drug use or abuse.
3. Encouragement by officials to successfully complete the program requirements.
4. The threat of jail for noncompliance."¹⁰⁵

b. HOPE/PACE

Hawaii's Opportunity Probation with Enforcement (HOPE) program is a judicial "hands-on" swift accountability court for felony probationers with drug problems, offering monitoring, drug testing, and swift, certain, and fair sanctions. Initial studies of HOPE showed very promising results, but a recent study using randomized control trials found that the program's benefits were not as great as initially thought; the study concluded that more research is required.¹⁰⁶

The Alaska equivalent to HOPE is the Alaska Probation Accountability with Certain Enforcement (PACE) program. PACE participants are felony offenders who have been given probation conditions that require either drug or alcohol testing; the majority of participants are required to submit to drug testing. In 2011, the Alaska Judicial Council and the Institute of Social and Economic Research conducted a preliminary evaluation of the PACE Program in Anchorage.¹⁰⁷ The results were consistent with the initial findings regarding HOPE. The findings showed that during the first three months on the program drug use dropped significantly compared to the three months prior to the start of the program.¹⁰⁸ Whereas 25% of all drug tests were positive during the three months prior to the program, only 9% of drug tests were positive during the initial three months on the program. 64% of probationers did not fail a drug test during the first three months on the program. As expected, the number of probation violations was relatively high during the first month for PACE participants but then dropped sharply over the next two months. The decreasing number of probation violations can be seen as an initial success while people were on the program.

Besides these very promising initial findings, no follow-up evaluation has been conducted since. It is also important to point out that the PACE program focuses on drug use and not on alcohol consumption.

¹⁰⁵ Wiliszowski, C. H., Fell, J. C., McKnight, A. S., Tippetts, A. S., & Ciccel, J. D. (2010). An Evaluation of Three Intensive Supervision Programs for Serious DWI Offenders. *Annals Of Advances In Automotive Medicine*. Accessed from www.nhtsa.gov/staticfiles/nti/pdf/811446.pdf. This study confirms prior research showing that ISPs are effective.

¹⁰⁶ Lattimore, P. K., MacKenzie, D. L., Zajac, G., Dawes, D., Arsenault, E. and Tueller, S. (2016), Outcome Findings from the HOPE Demonstration Field Experiment. *Criminology & Public Policy*, 15: 1103–1141.

¹⁰⁷ Carns, T. and S. Martin, "Anchorage PACE: Probation Accountability With Certain Enforcement—A Preliminary Evaluation of the Anchorage Pilot PACE Project, Alaska Judicial Council, September 2011.

¹⁰⁸ *Id.*

2. Monitoring

a. ASAP

The Alaska Alcohol Safety Action Program (ASAP) provides substance abuse screening, case management and accountability for DWI and other alcohol/drug related misdemeanor cases. This involves screening cases referred from the district court into drinker classification categories, as well as monitoring cases to ensure that participants comply with their education and/or treatment requirements.

In its 2015 "Justice Reinvestment Report," this Commission found that ASAP was being over-utilized and under-funded, and thus the program's effectiveness was limited. The Commission recommended to the legislature that ASAP resources be limited to focus only on DUI/Refusal and minor consuming offenders. The legislature accepted this recommendation, and in SB 91, limited the program to those offenders. The bill also mandated that ASAP conduct risk assessment screenings and provide more intensive supervision of higher risk offenders.¹⁰⁹

b. The 24/7 program

The 24/7 program is a pre-trial alcohol monitoring program that began in South Dakota. Program participants are monitored via regular alcohol testing. Findings regarding initial studies of the South Dakota 24/7 program were highly promising and, since then, comparable programs have been implemented in other jurisdictions across the country, including Alaska.

In 2013, Kilmer et al., evaluated the program in South Dakota empirically.¹¹⁰ Kilmer examined whether the re-arrest rates for alcohol-related offenses decreased since the implementation of the program in different countries. In their study, the authors compared arrest rates between counties that had implemented the programs to counties that had not. Overall, the authors found that the implementation of the 24/7 program reduced repeat DUI arrests by 12% and domestic violence arrests by 9%. The study did not find a significant effect of the 24/7 program on traffic crashes. Despite the study's promising findings, they are preliminary. At the moment, the effectiveness of 24/7 has not been established in the peer-reviewed literature, as many programs are still in their infancy and no long-term studies have examined whether participation in these programs leads to lasting behavioral changes.

The Alaska equivalent to the South Dakota program is the Alaska 24/7 Sobriety Monitoring program, created by legislation in 2014. Alaska's model relies on private vendors to perform the

¹⁰⁹ See SB 91, Sections 170-173.

¹¹⁰ Kilmer, B., N. Nicosia, P. Heaton, G. Midgette, "Efficacy of frequent monitoring with swift, certain, and modest sanctions for violations: insights from South Dakota's 24/7 Sobriety Project." American Journal of Public Health, 2013 January.

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monitoring function, in contrast to the South Dakota program, which relied on law enforcement agencies. Alaska's program also utilizes drug testing in some cases, in addition to alcohol testing. The Alaska Judicial Council has conducted an analysis on how the program is being implemented.¹¹¹ The Council found that 73% of program participants failed a test for the first time within 15 days of starting the program, and 53% "no-showed" to a test for the first time within 15 days of starting the program. It is not yet possible to draw definite conclusions about the effectiveness of this program, but the preliminary data suggests that the participants in this program are being correctly identified as needing pretrial monitoring.

Notably, 24/7 is not a treatment program. Offenders who fail to maintain sobriety in the 24/7 program due to their inability to control substance use should be required to complete mandatory substance abuse treatment with sobriety monitoring.

3. Wellness/Therapeutic Courts

DUI, drug and other therapeutic courts address addiction and, often times, co-occurring addiction and mental health disorders. These have shown positive results. These courts are not appropriate for all offenders, only substance-dependent offenders who benefit from a lengthy court involvement and the support of a multidisciplinary legal and treatment team. Therapeutic courts provide case management and require participation in an array of programs to address substance abuse issues, criminal thinking errors, employment barriers, and more to help achieve and maintain sobriety.

The Alaska Court System operates a number of therapeutic courts appropriate for DUI offenders. These include a felony DUI Wellness Court in Anchorage, the Anchorage Municipal Wellness Court (for non-felony offenders) and a DUI court in Fairbanks for defendants who want to overcome serious problems with (or addiction to) alcohol and who want to achieve lifetime sobriety. These DUI courts are jail diversion programs offering intensive substance abuse treatment and community supervision to support participants' abstinence and recovery. Entry into the programs is not automatic. Each request to participate is reviewed on a case by case basis, and a limited number of slots are available at any given time.

The Bethel Therapeutic Court (BTC) also handles repeat Driving Under the Influence (DUI) offenses. The court generally targets defendants charged with a misdemeanor or felony directly related to substance abuse. This therapeutic court is a post-adjudication or pre-sentence program designed to supervise defendants who are substance-abusing adults (over 18 years of age), as well as probationers and parolees placed in the program as a condition of probation or due to a

¹¹¹ This analysis is available upon request from the Judicial Council.

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violation of probation/parole. In this 18-month treatment program, defendants are helped to overcome their chemical addictions, become crime-free, and contribute to their families and community. Program components are: (1) a three-phase treatment program for substance abuse; (2) intensive supervision by a specially-assigned ASAP probation officer; (3) frequent appearances before a specially-assigned superior court judge; (4) regular attendance at 12-Step meetings and sobriety support groups; and (5) frequent, random alcohol and drug testing.

The Juneau Therapeutic Court (JTC) is a jail diversion program for those charged with felony alcohol and/or drug related offenses. The program offers substance abuse treatment and community supervision to support abstinence and recovery. Entry into the program is not automatic. Each request to participate in JTC is reviewed on a case by case basis.

The Ketchikan Therapeutic Court (KTC) is a post-adjudication or pre-sentence program designed to supervise multiple misdemeanor and felony defendants who are substance-abusing adults (over 18 years of age) charged with non-violent offenses. DUI offenders who meet the eligibility standards are helped to overcome their addiction, maintain sobriety and contribute to the community in an 18-month, three-phase treatment program through: intensive supervision by a Probation Officer, frequent appearances before the judge, regular attendance at recovery support groups, and random drug and alcohol testing.

DUI therapeutic courts have been shown to hold offenders accountable for their actions, change offenders' behavior to decrease recidivism, stop alcohol abuse, treat the victims fairly, and protect the public.¹¹² One report found that DWI courts significantly reduce recidivism among alcoholic DWI offenders.¹¹³ Another report on a DWI court in New Mexico indicated that "recidivism was reduced by over 50 percent for offenders completing the DWI court compared to similar offenders not assigned to the DWI court."¹¹⁴ Those results, however, were preliminary. An evaluation of the Maricopa County (Phoenix), Arizona, DWI court found that DUI felony offenders who were randomly assigned to the DWI court program achieved a lower rate of recidivism as measured by the time before a subsequent alcohol-related traffic offense.¹¹⁵

¹¹² Tauber, J., and Huddleston, C. W. "DUI/drug courts: Defining a national strategy." Alexandria, VA: National Drug Court Institute, 1999; Freeman-Wilson, K., and Wilkosz, M. P. "Drug court publications resource guide" (Fourth ed.). Alexandria, VA: National Drug Court Institute, 2002.

¹¹³ Breckenridge, J. F.; Winfree, L. T.; Maupin, J. R.; and Clason, D. L. "Drunk drivers, DWI "Drug Court" treatment, and recidivism: Who fails?" Justice Research and Policy, 2(1):87-105, 2000.

¹¹⁴ Guerin, P., and Pitts, W. J. "Evaluation of the Bernalillo County Metropolitan DWI/Drug Court: Final report." Albuquerque, NM: University of New Mexico, Center for Applied Research and Analysis, 2002; Fell, J & Tippetts, A. (October 2011). An Evaluation of Three Driving-Under-the-Influence Courts in Georgia. *Ann Adv Automot Med*. 2011 Oct; 55: 301-312. Retrieved from <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3256828/>

¹¹⁵ Jones, R. K., "Evaluation of the DUI Court Program in Maricopa County, Arizona." DOT HS 811 302. NHTSA, July 2011.

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The Alaska Judicial Council has evaluated Alaska's therapeutic courts as a whole, though these evaluations were not specific to Title 28 offenders. The evaluations concluded that the courts showed promising results; participants who successfully completed their program tended to have lower rearrest and reconviction rates.¹¹⁶ More comparison studies are needed, however, to draw definitive conclusions about the effectiveness of these programs.¹¹⁷

In summary, there are several programs available to Title 28 offenders in Alaska that promote accountability as well as rehabilitation. There are potential gaps in the system. Intensive supervision programs have been evaluated as effective, but there is no specific ISP for felony DUI/Refusal probationers. It should be noted, however, that provisions in SB 91 require the Department of Corrections to take a new approach to felony probation supervision.¹¹⁸ These provisions will take effect January 1, 2017, and may provide many of the benefits of ISP for felony DUI/Refusal offenders.

Misdemeanor offenders are not supervised by the Department of Corrections, but DUI/Refusal misdemeanor offenders are eligible for the ASAP program. As explained above, SB 91 required the ASAP program to restructure to focus on these offenders, and to expand its services. As restructured, ASAP may also provide many of the benefits of ISP for misdemeanor DUI/Refusal offenders.

Therefore the Commission does not have recommendations on programming at this time, but may have recommendations in the future if the identified gaps in programming for DUI/Refusal offenders have not been addressed by the changes to probation and to ASAP enacted by SB 91.

F. Should limited licenses be available for persons charged with or convicted of DWI or Refusal while providing for public safety?

This question (like the questions in sections A-E) was posed to the Commission in 2014. At that time, the DMV could not issue a limited license in the following cases:

¹¹⁶ Alaska Judicial Council, "Recidivism in Alaska's Therapeutic Courts for Addiction and Department of Corrections Institutional Substance Abuse Programs," March 2012. Retrieved from: <http://www.ajc.state.ak.us/sites/default/files/imported/reports/2012programrecid.pdf>. Alaska Judicial Council, "Recidivism in Alaska's Felony Therapeutic Courts," February 2007. Retrieved from: <http://www.ajc.state.ak.us/sites/default/files/imported/reports/recidtherct07.pdf>.

¹¹⁷ *Id.* Both reports identified gaps in information and data collection among involved agencies.

¹¹⁸ SB 91 Sections 114-115 & 151.

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- For administrative revocations or court misdemeanor convictions for Refusal. [AS 28.15.201(d)(1)]
- For DUI or Refusal felony convictions. [AS 28.15.201(d)(1)]
- For operating commercial motor vehicles. [AS 28.33.140(f)] CFR 383.51 (except A CDL holder can obtain a limited license for the base privilege (D) to drive as the vehicle being driven is a non-commercial vehicle).
- If the applicant has been convicted of DUI or Refusal while on probation for a prior DUI or Refusal conviction.
- If the applicant has been convicted of driving in violation of a limitation under AS 28.15.291(a)(2).
- If the applicant is currently revoked, suspended, denied, or cancelled in another state.
- For any other criminal offense following a court conviction. For example, the DMV has no authority to issue a limited license for a Reckless Driving conviction.

Given these limitations, limited licenses were essentially only available for misdemeanor DUI offenders. SB 91 expanded this eligibility to certain felony DUI offenders. With the passage of the new law:

- Limited licenses during a permanent license revocation are allowed if the person has successfully participated for at least 6 months, or completed court-ordered treatment (therapeutic court), has proof of insurance, and has never had a limited license revoked. A person who receives a limited license must use an Ignition Interlock Device.
- If an offender lives in a community where there is no therapeutic court, she or he may qualify for a limited license if she or he completed a treatment program with certain specified elements and can prove sobriety for 1.5 years.

As stated in Section D above, the Commission recommends extending limited licensure eligibility to Refusal offenders to the same extent as DUI offenders. Other than that, the Commission does not have any new proposals in this area. If the new limited licensure law is successful, the Commission may recommend expanding it beyond therapeutic programs in the future.

Conclusion

This report has provided an extensive review of the alcohol- and drug-related motor vehicle offenses found in Title 28. It has identified gaps in certain areas and has made a number of recommendations in this report that should promote offender rehabilitation and reduce recidivism. The appendices to this report explain the following in greater depth: the changes to

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the law in this area following SB 91 (Appendix A), license revocation (Appendix B), and ignition interlock device (Appendix C). The Commission hopes this report is helpful to policy makers and will enable an informed discussion on revisions to the law in Title 28.

Appendix A

Changes to Title 28 Made by SB 91

The enactment of SB 91 in July of 2016 changed Alaska law in the areas of revocation and issuance of drivers' licenses, DWLS, and sentences for DUI and Refusal. These changes are summarized below.

a. **DUI- and Refusal-related Administrative Driver's License Revocation**¹

- Any administrative license revocation for refusing a chemical or breath test after arrest for DUI or for refusing a breath or blood test after a serious injury or death accident shall be rescinded if person is acquitted, or if all criminal charges for DUI/ Refusal have been dismissed without prejudice.

b. **Alcohol Safety Action Program (ASAP)**²

- The Alcohol Safety Action Program (ASAP) is now statutorily limited to DUI/Refusal referrals from courts or DMV. DHSS must develop regulations for ASAP programs to ensure that its screenings are conducted with validated risk tools and participants are monitored as appropriate to their risk.

c. **DWLS Penalties**³

The group of offenses generally referred to as "DWLS" includes driving while license canceled, suspended, revoked, or in violation of a limitation. A person's license can be canceled, suspended, revoked, or limited for a variety of reasons, including conviction of DUI, conviction of DWLS, or conviction of other offenses.

- Under SB 91, the offense of DWLS – when not emanating from a DUI or Refusal conviction – is reduced from a crime to an infraction, meaning that a fine of \$300 or less, but no jail time, is now the penalty for this offense.
- Minimum-mandatory sentences for DUI- or Refusal-related DWLS were reduced.

d. **DUI/Refusal Penalties**

- The first-time minimum DUI or Refusal sentence of three days must now be served on Electronic Monitoring (EM). When and where EM is not available, the offender shall serve the term in a private residence under conditions determined by the DOC Commissioner.⁴
- Maximum probation terms are reduced.⁵ For 1st DUI, from 10 years to 1 year; for 2nd DUI and higher, from 10 years to 2 years; and for any felony DUI, from 10 years to 5 years.

¹ SB 91, Section 101.

² SB 91, Sections 171, 172.

³ SB 91, Sections 104, 105

⁴ SB 91, Section 107.

⁵ SB 91, Section 79.

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- Felony DUI minimum mandatory sentences are changed to presumptive ranges with the prior mandatory-minimums constituting the low end of the presumptive sentencing range.⁶
- The new Suspended Entry of Judgment (SEJ) mechanism may be available for DUI/Refusal offenses because no specific exclusion was provided in Title 28.⁷ Compare AS 28.35.030(b)(2)(b)(which excluded SIS for DUI/Refusal offenses).
 - e. Expanded therapeutic court discretion in sentencing⁸**
 - In addition to reducing a term of imprisonment, a therapeutic court now can reduce a fine or the term of a license revocation based on the defendant's compliance with a treatment program.
 - f. Limited licenses during felony DUI revocation period⁹**
 - Limited licenses during a permanent license revocation are allowed if the person has successfully participated for at least 6 months, or completed court-ordered treatment (therapeutic court), has proof of insurance, and has never had a limited license revoked. A person who receives a limited license must use an Ignition Interlock Device.
 - If an offender lives in community where there is no therapeutic court, s/he may qualify for a limited license if s/he completed a treatment program with certain specified elements and can prove sobriety for 1.5 years.
 - g. Restoration of Driver's License¹⁰**
 - The DMV may now restore a person's license after permanent revocation if there have been no driving-related offenses during the ten years since revocation.
 - The DMV shall restore a person's license if the person had obtained a limited license for therapeutic court or satisfied rehabilitative treatment program and has now driven for three years without revocation.

⁶ SB 91, Section 90.

⁷ SB 91, Section 77. This inconsistency is presumed to be a drafting error, since the Commission recommended that offenses excluded from eligibility for an SIS would be similarly excluded from eligibility for an SEJ disposition.

⁸ SB 91, Section 106.

⁹ SB 91, Section 103.

¹⁰ SB 91, Section 109.

Appendix B

Background of Administration and Judicial License Revocation Processes in Alaska

Administrative license revocation (ALR) differs from judicial or court-ordered license revocation in several ways.

ALR laws allow an administrative agency to take action against the driver's license at the time of citation or arrest. Typically the arresting officer confiscates the license and issues a notice. The notice serves as a temporary license for a short period during which the driver may request an administrative hearing. Regardless of the outcome of such an administrative hearing, the arrestee is still subject to a separate criminal charge that may lead to additional penalties, including judicial license actions.¹

Like 41 other states and the District of Columbia,² both the Division of Motor Vehicles (DMV) and the courts in Alaska have some statutory authority to revoke drivers' licenses. The DMV administrative process and related court criminal case can be staggered (one before the other), but any revocation subsequently imposed by a court will be made concurrent with the DMV action.

1. Administrative License Revocation

In Alaska, the DMV's administrative authority to revoke licenses is statutorily limited under AS 28.15.165, 28.15.176, and 28.15.187 to cases involving:

- 'Per se' DUI (based on an illegal BAC of .08 or higher, or .04 or higher for commercial vehicles)
- Refusal of a chemical or breath test after lawful arrest for DUI;
- Refusal of a chemical test or test of breath and blood after motor vehicle accident that causes death or serious physical injury;
- Minor under 21 driving after consuming alcohol (aka "zero tolerance" and established by .02 BAC); and
- Fraudulent use of a driver's license for identification.

Most of the administrative revocations involve DUIs.³

When a police officer has probable cause with respect to any of these previously-listed offenses, she or he shall seize the driver's license, notify the driver that DMV intends to revoke the license, and issue a temporary license good for seven days. The revocation order will take effect in seven days unless

¹ Williams, A. F.; Weinberg, K.; and Fields, M. "The effectiveness of administrative license suspension laws." Alcohol, Drugs and Driving, 7(1):55-62, 1991.

² NHTSA DOT HS 810 878, Traffic Safety Facts, Administrative License Revocation, January 2008.

³ In 2014, for example, in Alaska there were 3718 alcohol-related ALR orders issued: 3563 resulted from a per se DUI or Refusal, 154 revocations were for "zero tolerance" and 1 was from an Under 21 fraudulent use of an ID to obtain alcohol. The total does not include the administrative license *suspensions* which were also ordered in 2014 for both driving related and non-driving conduct.

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the driver requests an administrative review. (The officer must also notify the driver of this right to review upon seizing the driver's license.)

If the person makes the request for a hearing, then there is no license revocation, and the person may continue to drive on the temporary license until the time of the DMV hearing or until they withdraw their request, if that first occurs. A hearing is typically scheduled 30 days out for self-represented drivers and 45 days for represented drivers. Hearings may be continued only for 'good cause' or because there has been a delay in obtaining discovery from the prosecutors. (Good cause does not include the pendency of the criminal case). About 1100 administrative hearings are scheduled every year,⁴ with an 11-15% cancellation rate.⁵

At an administrative hearing, the DMV hearing officer will determine, based on the evidence presented, whether it was more probable than not that the person was operating a motor vehicle while intoxicated.⁶ An ALR may be ordered only if there was a lawful arrest.

While hearing officers are not judges, a judicial review of the hearing officer's decision is available if an appeal is filed within 30 days in superior court. The hearing officer does have discretion to stay pending appeal of the ALR order.

Neither a hearing officer's decision approving an ALR nor a driver's waiver of an administrative review is admissible evidence in the related criminal case.

Mandatory revocation periods imposed for an ALR are the same as those imposed for a judicial revocation. Administrative revocation periods must be made concurrent with judicial revocation periods if based on the same incident.⁷ And, just like the courts do, DMV has the authority to approve limited licenses after a DUI (but not a Refusal) revocation, provided that various statutory requirements have been met.⁸

Notably, the DMV estimates that ALR notice-and-order process "captures" many but not all DUI/Refusal cases ultimately filed in the courts.⁹ Drivers whose DUI charges are based on evidence other than an illegal BAC are not subject to an ALR under current law.

Most (70-75%) Alaska drivers who are served with an ALR notice do not request a hearing; for them the period of license revocation begins 7 days after the notice.

2. Judicial Revocation

Judicial (court) revocation authority is found at AS 28.15.181. Court revocations differ from administrative revocations in the following ways.

⁴ DMV hearing officers block off 1 hour for each hearing. The average time of a contested hearing is about 20-40 minutes. The police officer who issued the notice typically testifies by phone. DMV currently has two dedicated hearing officer positions to conduct these hearings.

⁵ Hearings are cancelled because the case may have been first resolved in court, the driver has decided not to contest the revocation, or the police officer is no longer employed and the citation must be dismissed.

⁶ AS 28.15.166(j). See also AS 28.35.031(a) and AS 28.15.166(g).

⁷ See AS 28.15.183(f), citing 28.15.185.

⁸ Refusal offenders are not eligible for limited licenses.

⁹ Cases not "captured" by the ALR process are those in which the evidence of impairment may be wholly circumstantial, or may involve controlled substances alone or in tandem with alcohol.

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Most significantly:

- Courts are statutorily authorized (post-conviction) to revoke licenses for a larger number of offenses. Courts can revoke licenses for DUI offenses if the driver was under the influence of only drugs or inhalants or a mix of drugs and alcohol when the BAC is below .02, or for other driving offenses designated by the Legislature, such as reckless driving.¹⁰
- The Court of Appeals has interpreted current statutes to allow even district courts to impose a revocation term as long as a lifetime,¹¹ and make its revocation term consecutive to a DMV revocation. In contrast, DMV can impose only concurrent terms.
- At sentencing, courts impose a mandatory IID requirement which operates as a bar to license reinstatement, even post-revocation.¹² An administrative licensing revocation order does not include an IID requirement for relicensing.¹³

Also:

- In a criminal case, decisions are made by a judge and/or a jury. However, the same procedural safeguards apply in civil driver's license revocation proceedings for driving while intoxicated as apply in criminal prosecutions for that offense.¹⁴
- A criminal court will hear all legal challenges; in contrast, the administrative license revocation process is typically limited to the legality of the stop and probable cause.
- A license can only be revoked in a criminal case after a conviction. A conviction requires a much higher standard of proof (i.e. proof beyond a reasonable doubt) for the imposition of any penalty including the license revocation and the delays discussed below.
- State court proceedings typically involve greater delays. According to the Alaska Court System, the average (mean) time from start to finish in all misdemeanor criminal cases is 78 days for a guilty or no contest plea, and 244 days for a jury trial. The average time for felony cases is 195 days for a guilty or no contest plea, and 538 days for a jury trial.
- A judicially-ordered license revocation is only one of a number of sanctions (including imprisonment and probation) which can be imposed in a criminal case.
- In criminal cases, DMV's statutory role is peripheral, i.e. to simply implement a court's revocation order. With ALR, DMV has its own process, beginning with its notice.
- As a practical matter, license revocation is typically construed as a condition of probation not to drive. A court has some ability to supervise the driver during the period of probation. For misdemeanors,

¹⁰ See 28.15.281.

¹¹ *Dodge v. Anchorage*, 877 P.2d 270 (Alaska App. 1994).

¹² Traffic Injury Research Foundation. (2012). *Alcohol Interlock Program Technical Assistance and Training: Alaska*. Ottawa, Ontario: Traffic Injury Research Foundation. Retrieved from http://www.ajc.state.ak.us/sites/default/files/imported/acjc/dui/nhtsa_tech_assistance_ak_4_ignition_interlock.pdf

¹³ Both court and DMV-approved limited licenses do require IID installation.

¹⁴ *Hartman v. State of Alaska*, 152 P.3d 1118 (Alaska 2007).

ongoing court supervision is informal but the court may direct the Alaska Safety Action Program to supervise referrals to treatment.¹⁵ For felonies, supervision is provided by DOC probation officers.

- Pursuant to changes recently enacted by SB 91, most drivers whose criminal DUI/Refusal cases are dismissed should be eligible to have any ALR rescinded. It's unclear how this change might impact the number of administrative revocation notices, reviews, or the number of DUI trials.

3. Research shows that administrative license (ALR) revocations are effective

Effective correction is provided by “swift, certain and fair” or proportionate sanctions.¹⁶ Sanctions which can be swiftly put into effect are more effective in deterring reoffending. Therefore, administrative license revocation (ALR) – which can take effect much more quickly (7-45 days) than judicial license revocation (78-538 days) - should better reduce DUI recidivism. ALR is also consistent with the ‘certainty principle’ for effective correction. Administrative actions that utilize a lower standard of proof provide a more certain outcome than in a criminal court process. Finally, ALR is a fair sanction in that license revocation is a logical consequence for illegal driving conduct. Also, it is also seems fair to those who experience it if all similarly-situated drivers receive the same punishment.

ALR’s effectiveness has been substantiated by various studies. Not only is ALR effective in reducing recidivism among all levels of offenders but it appears to be more effective than post-conviction (judicial) license revocation processes.

- Studies of pre-conviction administrative license revocation/suspension laws passed in various states showed consistent effects across the different group of DUI offenders studied; although the results depended heavily on how quickly the sanction was effective. In general, the research evidence shows that administrative driver license suspension is effective “in reducing not only crashes overall, but also crashes where alcohol was a factor. The evidence shows that administrative license action for per se offenses exerts both specific deterrent (or incapacitative) effects ranging from 15% to 35% and general deterrent effects of 5% to 40%.”¹⁷
- Rogers (1997) found that the passage of an ALR law was associated with significant reductions in subsequent alcohol-related crashes and DUI convictions among both first and repeat offenders, with effect sizes ranging from 27% to 33% for alcohol-related crashes and 19% to 27% for subsequent DUI convictions.¹⁸
- ALR laws have been shown in a recent nationwide study to reduce fatal crashes involving drinking drivers by 13 to 19 percent.¹⁹
- One study comparing both pre-conviction (administrative) and post-conviction mandatory license suspension in 46 states evaluated the impact of sanctions on monthly alcohol-involved fatal

¹⁵ From 7/1/15 to 3/14/16, ASAP opened 4060 cases; 2491 (61%) 2491 or 61% of these referrals were OUI/DUI/Refusal related.

¹⁶ See the Commission’s “Justice Reinvestment Report,” December 2015, at 12. Available at http://www.ajc.state.ak.us/sites/default/files/imported/acjc/AJRI/ak_jri_report_final12-15.pdf.

¹⁷ Blomberg, R. D., D. F. Preusser, and R. G. Ulmer. “Deterrent Effects of Mandatory License Suspension for DWI Conviction.” Technical Report No. DOT-HS-807-138. National Highway Traffic Safety Administration, Washington, D.C., 1987.

¹⁸ Rogers, P. N. “The Specific Deterrent Impact of California’s 0.08% Blood Alcohol Concentration Limit and Adm Per Se” License Suspension Laws: Vol. 2. Department of Motor Vehicles, Sacramento, Calif., 1997.

¹⁹ Voas, R. B.; Tippetts, A. S.; and Fell, J. C. “The relationship of alcohol safety laws to drinking drivers in fatal crashes.” Accident Analysis and Prevention, 32:483-492, 2000.

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crashes occurring between 1976 and 2002. The researchers found that administrative pre-conviction license suspension was associated with a significant 5% reduction in alcohol-involved fatal crashes, but that post-conviction suspension appeared to have little effect, a finding they hypothesize may be due to the speed of punishment associated with the administrative application of this sanction.²⁰

As we have discussed, relative to judicial revocation processes, administrative license revocations are effective, efficient, expeditious and economical. The evidence is that administrative license revocations are effective in reducing recidivism in large part because they provide an immediate consequence for the offending conduct. They are efficient because they concern only the licensing status, there is a lower burden of proof for the offending conduct, and there is a non-discretionary mandatory outcome if sufficient evidence is provided by the police officer. They are expeditious because most of the revocations go into effect within seven days, with even contested hearings being held within 45 days. They are economical because the presence of prosecutors, public defenders and juries are not required and all witnesses can attend by phone. Thus, administrative license revocation (ALR) should be maintained.

Furthermore, as long as the legislature requires DMV to rescind an ALR whenever a related criminal case is dismissed, there is no longer any reason to limit the use of ALR to *per se* offenses. As ALRs are effective, efficient et cetera, their use should be expanded to at least all other offenses for which mandatory court revocation is currently required. This will lessen the reliance on protracted criminal process for appropriate license actions, and expands the advantages of ALR to other offenses.

Are courts' license revocation orders and DMV license revocation authority entirely congruent such that statutory judicial authority is superfluous and may be eliminated, at least in mandatory license revocation cases? No.

- First, the therapeutic courts have newly created authority to alter the length of otherwise-mandatory terms of license revocation as a means of providing an incentive for the completion of a comprehensive program of rehabilitation. DMV cannot alter mandatory terms.
- Second, since SB 91 now requires DMV rescission of an ALR even when there is a dismissal without prejudice, there may be some cases in which an individual is ultimately convicted in a re-filed case and after an ALR is rescinded. In such cases, judicial revocation authority is the only authority for imposing a post-conviction revocation.
- Third, DMV reports that there are some instances in which it is not notified of citations or arrests by law enforcement for *per se* offenses. In those instances only a post-conviction judicial revocation order would occasion a license revocation.
- Fourth, existing statutes allow a court to impose longer license revocation terms than the minimum-mandatory terms imposed by DMV, e.g. up to a lifetime revocation for a misdemeanor DUI offender, and to make court-ordered revocation terms consecutive to administrative revocation terms. See AS 28.15.181(c). Anecdotally, courts rarely impose additional time or make

²⁰ Wagenaar, A., M. Maldonado-Molina, D. Erickson, L. Ma, A. Tobler, and K. Komro, "General deterrence effects of U.S. statutory DUI fine and jail penalties: Long-term follow-up in 32 states." *Accident Analysis and Prevention* 39 (2007) 982–994.

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terms consecutive. However, consecutive revocation terms may be appropriate if an individual is facing a lengthy jail sentence, say for a combination of a misdemeanor DUI and a non-vehicular felony offense.

Because they are not entirely congruent, both authorities should be maintained.

Appendix C

Ignition Interlock Devices – Alaska

April 5, 2016

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Highlights

Alaska Ignition Interlock Program	<ul style="list-style-type: none"> - Program type: Judicial¹⁴⁹ - Year interlock legislation first passed: 1989¹⁵⁰ - Type of ignition interlock law: Mandatory¹⁵¹ - Offenders subject to ignition interlock device: All DUI/OUI offenders¹⁵² - Interlocks required for first-time offenders: 6 months¹⁵³ - Number of interlocks currently installed (2013): 1,922¹⁵⁴ - Number of interlocks per ten-thousand residents (2013): 26.3¹⁵⁵
Ignition Interlock Devices in the literature	<ul style="list-style-type: none"> - Ignition interlock devices reduce recidivism among first-time and repeat offenders while installed.¹⁵⁶ - Ignition interlock devices have little to no residual benefit: once removed from an offender’s vehicle, ignition interlock users reoffend at a rate similar to those who never had an ignition interlock device installed.¹⁵⁷ - Research provides strong evidence that offenders who install an ignition interlock device are sufficiently similar to those who do not, i.e., selection bias is likely not an issue.¹⁵⁸

Ignition Interlock Device Estimates – 2013 ¹⁵⁹					
	Installed Ignition Interlock Devices	Population	Ignition Inter-lock Devices per 10,000	Fatal Alcohol-Impaired-Driving Crash (FAIDC)	Ignition Inter-lock Devices Per FAIDC
U.S.	304,600	313 million	9.7	7,356	41
Alaska	1,922	731,449	26.3	11 ¹⁶⁰	175

¹⁴⁹ NHTSA. (2013). *Digest of Impaired Driving and Selected Beverage Control Laws, 28th Edition* (DOT HS 812 119). Washington, DC: National Highway Traffic Safety Administration. Retrieved from <http://www.nhtsa.gov/staticfiles/nti/pdf/812119-2013ImpairedDrivingDigest.pdf>

¹⁵⁰ Schmitz, R. (2009). *Ignition Interlock Devices in Alaska* [PowerPoint slides]. Retrieved from http://www.correct.state.ak.us/commish_corner/powerpoint/040409_ignition_interlock.ppt

¹⁵¹ NHTSA. (2013). *Digest of Impaired Driving and Selected Beverage Control Laws, 28th Edition* (DOT HS 812 119). Washington, DC: National Highway Traffic Safety Administration. Retrieved from <http://www.nhtsa.gov/staticfiles/nti/pdf/812119-2013ImpairedDrivingDigest.pdf>

¹⁵² *Id.*

¹⁵³ Operating a vehicle, aircraft or watercraft while under the influence of an alcoholic beverage, inhalant, or controlled substance, Alaska Stat. § 28.35.030

¹⁵⁴ Roth, R. (2013). *2013 Survey of Currently-Installed Interlocks in the U.S.* Retrieved from http://www.rothinterlock.org/2013_survey_of_currently_installed_interlocks_in_the_us_revised-12_17_13.pdf

¹⁵⁵ *Id.*

¹⁵⁶ Mayer, R. (2014). *Ignition interlocks – A toolkit for program administrators, policymakers, and stakeholders. 2nd Edition* (Report No. DOT HS 811 883). Washington, DC: National Highway Traffic Safety Administration. Retrieved from http://www.nhtsa.gov/staticfiles/nti/pdf/IgnitionInterlocks_811883.pdf

¹⁵⁷ *Id.*

¹⁵⁸ Elder, R., et al. (2011). Effectiveness of Ignition Interlocks for Preventing Alcohol-Impaired Driving and Alcohol-Related Crashes. *American Journal of Preventive Medicine*, 40(3):362–376. Retrieved from <http://www.thecommunityguide.org/mvoi/PIIS0749379710007105.pdf>

¹⁵⁹ Roth, R. (2013). *2013 Survey of Currently-Installed Interlocks in the U.S.* Retrieved from http://www.rothinterlock.org/2013_survey_of_currently_installed_interlocks_in_the_us_revised-12_17_13.pdf

¹⁶⁰ Alaska Department of Transportation. (n.d.). *Alcohol Impaired (Confirmed BAC >.08) Driving Fatalities and Fatal Crashes 1994-2014*. Retrieved from http://dot.alaska.gov/stwdplng/hwysafety/assets/pdf/Alcohol_Impaired_Driving_Fatalities_and_Fatal_Crashes_1994_2014.pdf

The Evidence Base

Effects of Ignition Interlock Devices on Recidivism

Research over the last 20 years has consistently found that ignition interlock devices reduce recidivism while installed on DUI/OUI offenders' vehicles (by approximately 67 percent relative to comparison groups¹⁶¹).¹⁶² Strong evidence suggests that this is true whether the offender is a first-time offender, a repeat offender or a high-risk offender¹⁶³.¹⁶⁴ However, research has also consistently found that once ignition interlock devices are removed, DUI/OUI recidivism rates between those who had an ignition interlock device installed and those who did not (whether because they declined to install one or because they were deemed ineligible), quickly resemble one another.^{165,166}

Research has also found that ignition interlock devices can be dependable predictors of future DUI/OUI recidivism: higher rates of failed breath tests, including, failed morning-breath tests, which suggests heavy drinking the night before, predict higher rates of post-ignition interlock recidivism.¹⁶⁷

Finally, as jurisdictions differ as to eligibility criteria and whether ignition interlock devices are mandatory or optional, a concern is that the observed differences in recidivism is a result of statistical bias. However, research suggests that offenders who participate in ignition interlock programs and offenders who do not (irrespective of the reason) are sufficiently similar.¹⁶⁸

Effects of Ignition Interlock Devices on Public Safety

A study of the Quebec ignition interlock program showed significantly higher rates of vehicle accidents among offenders with an installed ignition interlock device compared to offenders with a suspended license – true of both first-time and repeat offenders.¹⁶⁹ A study of the California ignition interlock program showed similar results: offenders with an installed ignition interlock device had an 84% higher chance of being involved in an accident than the comparison group; repeat offenders had a 130% higher chance of being involved in an accident than the

¹⁶¹ Guide to Community Preventive Services. (n.d.). *Reducing alcohol-impaired driving: ignition interlocks*. Retrieved December 9, 2015, from <http://www.thecommunityguide.org/mvoi/AID/ignitioninterlocks.html>. Last updated: 9/24/2013

¹⁶² Mayer, R. (2014). *Ignition interlocks – A toolkit for program administrators, policymakers, and stakeholders. 2nd Edition* (Report No. DOT HS 811 883). Washington, DC: National Highway Traffic Safety Administration. Retrieved from http://www.nhtsa.gov/staticfiles/nti/pdf/IgnitionInterlocks_811883.pdf

¹⁶³ A high risk offender is an individual who repeatedly drives while intoxicated and/or drives with high breath-alcohol concentrations.

¹⁶⁴ Mayer, R. (2014). *Ignition interlocks – A toolkit for program administrators, policymakers, and stakeholders. 2nd Edition* (Report No. DOT HS 811 883). Washington, DC: National Highway Traffic Safety Administration. Retrieved from http://www.nhtsa.gov/staticfiles/nti/pdf/IgnitionInterlocks_811883.pdf

¹⁶⁵ *Id.*

¹⁶⁶ Elder, R., et al. (2011). Effectiveness of Ignition Interlocks for Preventing Alcohol-Impaired Driving and Alcohol-Related Crashes. *American Journal of Preventive Medicine*, 40(3):362–376. Retrieved from <http://www.thecommunityguide.org/mvoi/PIIS0749379710007105.pdf>

¹⁶⁷ Mayer, R. (2014). *Ignition interlocks – A toolkit for program administrators, policymakers, and stakeholders. 2nd Edition* (Report No. DOT HS 811 883). Washington, DC: National Highway Traffic Safety Administration. Retrieved from http://www.nhtsa.gov/staticfiles/nti/pdf/IgnitionInterlocks_811883.pdf

¹⁶⁸ Elder, R., et al. (2011). Effectiveness of Ignition Interlocks for Preventing Alcohol-Impaired Driving and Alcohol-Related Crashes. *American Journal of Preventive Medicine*, 40(3):362–376. Retrieved from <http://www.thecommunityguide.org/mvoi/PIIS0749379710007105.pdf>

¹⁶⁹ *Id.*

comparison group.¹⁷⁰ Importantly, the absolute accident rate for program participants was not significantly different than that of the general population in California.¹⁷¹

In summary, while offenders with installed ignition interlock devices tend to have more vehicle accidents than offenders with suspended licenses, offenders with installed ignition interlock devices tend to have about the same number of vehicle accidents as the general public. Accordingly, the safety hazard, rather than ignition interlock devices, may be time spent on the roadways -- while it is well documented that offenders with suspended licenses continue to drive, research has shown that offenders with installed ignition interlock devices drive more frequently and further afield.¹⁷²

Finally, one study found that offenders with installed ignition interlock devices have fewer alcohol-related vehicle accidents than offenders with suspended licenses.¹⁷³

Benefits of an Ignition Interlock Program

The following is verbatim from NHTSA's 2014, *Ignition Interlocks – A toolkit for program administrators, policymakers, and stakeholders*¹⁷⁴:

Ignition interlocks, when appropriately used, prevent alcohol-impaired driving by DWI offenders, resulting in increased safety for all roadway users. There are other benefits to ignition interlocks, however, that enhance their value.

- **Reduction in Recidivism.** Research has shown that, while installed on an offender's vehicle, ignition interlocks reduce recidivism among both first-time and repeat DWI offenders.
- **Legal Driving Status.** Ignition interlocks permit offenders to retain or regain legal driving status, thus enabling them to maintain employment and manage familial and court-ordered responsibilities that require driving. This is a particularly relevant benefit, as many offenders without interlocks drive illegally on a suspended/revoked license, often after drinking. The installation of an interlock on the offender's vehicle reduces the probability of this occurring, thereby improving public safety.
- **Offenders and Families Approve.** A majority of offenders surveyed believe ignition interlock sanctions to be fair and reduce driving after drinking. Family members believed that ignition interlocks provided a level of reassurance that an offender was not driving while impaired and reported a generally positive experience and impact on the offender's drinking habits.
- **Predictor of Future DWI Behavior.** The record of breath tests logged into an ignition interlock has been found to be an excellent predictor of future DWI recidivism risk. Offenders with higher rates of failed BAC tests have higher rates of post-ignition interlock recidivism, information that could be critical regarding whether to restore an offender's license, and any conditions under which such action may occur.
- **Cost Effectiveness.** As with any sanction, there are costs. Most administrative costs (i.e., those costs associated with managing the interlock program) are absorbed by the State. Costs associated with the devices themselves, including installation, maintenance, monitoring, estimated at approximately \$3 to \$4 per day, are borne by the offender. Research has estimated a cost/benefit of an ignition interlock sanction at \$3 for a first time offender, and \$4 to \$7 for other offenders accruing for each dollar spent on an interlock program. The cost of an interlock sanction is less

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ Guide to Community Preventive Services. (n.d.). *Reducing alcohol-impaired driving: ignition interlocks*. Retrieved December 9, 2015, from <http://www.thecommunityguide.org/mvoi/AID/ignitioninterlocks.html>. Last updated: 9/24/2013

¹⁷⁴ Mayer, R. (2014). *Ignition interlocks – A toolkit for program administrators, policymakers, and stakeholders. 2nd Edition* (Report No. DOT HS 811 883). Washington, DC: National Highway Traffic Safety Administration. Retrieved from http://www.nhtsa.gov/staticfiles/nti/pdf/IgnitionInterlocks_811883.pdf

than incarceration, vehicle impoundment, or other monitoring devices such as alcohol monitoring bracelets, with the costs accruing to the offender through a series of fees rather than the State. As interlock programs mature and more offenders are added into the program, the cost/benefit ratio should improve.

- **Substance Abuse Treatment.** A number of States require the installation of an ignition interlock as a final step toward an unrestricted driving privilege after DWI conviction, sometimes combined with substance abuse treatment. In these instances, the data collected by the interlock can provide treatment providers with current, objective information regarding the offender's behavior, which should result in a better treatment outcome. The combination of an interlock and treatment provides a benefit for the public, in that counseling based on objective data from the interlock's records rather than subjective information provided by the offender should have a more positive effect on the offender, resulting in an increased probability of a reduction in recidivism.

Alaska

Ignition Interlock Program

Depending on the state, the authority to impose an ignition interlock sanction may sit with the judiciary, the agency responsible for driver's licenses (typically, the Department of Motor Vehicles) or a combination of the two. The authority to impose an ignition interlock sanction in Alaska sits with the judiciary.¹⁷⁵

A DUI/OUI conviction results in a mandatory ignition interlock sanction in Alaska.¹⁷⁶ The length of the sanction depends on the number of prior, misdemeanor DUI/OUI convictions: beginning with a minimum of 6 months for the first offense and ending with a minimum of 36 months for the sixth (or greater) offense.¹⁷⁷

Additionally, following a mandatory license revocation, a DUI/OUI offender must use a motor vehicle equipped with an ignition interlock device to drive during his or her period of probation – a 'limited license' is not available to offenders who refused to submit to a breath test.^{178,179} First-time offenders may apply for a limited license to drive following 30 days of license revocation; probationary period lasts ten years.¹⁸⁰ Second-time or higher (non-felony) offenders may apply for a limited license to drive following 90 days of license revocation; probationary period lasts ten years.¹⁸¹ See Appendix A for an explanatory chart.

Exceptions to the sanction exist. Due to the State's large land area and dispersed population, offenders are not required to use an ignition interlock device if they operate a motor vehicle in certain communities, namely, communities in which car registration/insurance is not required.^{182,183} Additionally, the court may allow an offender limited driving privileges without an ignition interlock device if the offender is required as a condition of employment to drive his/her employer's motor vehicle and if the offender's driving will not create substantial danger.¹⁸⁴

¹⁷⁵ NHTSA. (2013). *Digest of Impaired Driving and Selected Beverage Control Laws, 28th Edition* (DOT HS 812 119). Washington, DC: National Highway Traffic Safety Administration. Retrieved from <http://www.nhtsa.gov/staticfiles/nti/pdf/812119-2013ImpairedDrivingDigest.pdf>

¹⁷⁶ Operating a vehicle, aircraft or watercraft while under the influence of an alcoholic beverage, inhalant, or controlled substance, Alaska Stat. § 28.35.030

¹⁷⁷ *Id.*

¹⁷⁸ Alcohol-related offenses, Alaska Stat. § 12.55.102

¹⁷⁹ Limitation of driver's license, Alaska Stat. § 28.15.201

¹⁸⁰ Limitation of driver's license, Alaska Stat. § 28.15.201

¹⁸¹ Limitation of driver's license, Alaska Stat. § 28.15.201

¹⁸² Motor vehicle liability insurance required; exemptions, Alaska Stat. § 28.22.011

¹⁸³ Alaska Court System. (2015). *Ignition Interlock Device Information Sheet* (CR-483). Retrieved from <http://www.courtrecords.alaska.gov/webdocs/forms/cr-483.pdf>

¹⁸⁴ Alcohol-related offenses, Alaska Stat. § 12.55.102

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In 2013, there were approximately 1,922 ignition interlock devices installed in Alaska, which made the State fifth in the nation in per capita installed ignition interlock devices: 26.3 devices per 10,000 residents.¹⁸⁵ Additionally, in 2013, Alaska had the sixth highest number of installed ignition interlock devices per fatal alcohol-impaired-driving crash in the nation at 175 (an estimated 11 fatal alcohol-impaired-driving crashes occurred in Alaska in 2013).^{186,187}

Ignition Interlock Device Estimates – Alaska ¹⁸⁸									DPS ¹⁸⁹
Year	Installed Ignition Interlock Devices	Rank on Installed IIDs	Population	IIDs per 10,000	Rank on IIDs per 10,000	Fatal Alcohol-Impaired-Driving Crash ¹⁹⁰	IIDs Per FAIDC	Rank on IIDs Per FAIDC	DUI/OUI Arrests
2014	--	--	735,132	--	--	23	--	--	2,395
2013	1,922	32	731,449	26.3	5	11	175	6	2,658
2012	2,175	31	735,231	29.6	4	11	198	4	3,101
2011	3,646	25	710,231	51.3	2	18	203	1	4,388
2010	1,245	--	698,473	17.8	--	15	83	--	4,934
2009	317	--	668,931	4.7	--	16	20	--	5,384
2008	--	--	--	--	--	16	--	--	5,396
2007	90	--	670,053	1.3	--	13	7	--	5,167

Based on data from the Alaska Department of Public Safety, DUI/OUI arrests have been declining in Alaska since 2008. The average year-over-year drop between 2008 and 2014 was 15 percent. At its peak in 2008, 5,396 individuals were arrested for a DUI/OUI; in 2014, 2,395 individuals were arrested.

Having peaked in 2011, installed ignition interlock devices in Alaska are declining as well. However, there is insufficient evidence to draw a correlation between declining DUI/OUI arrests and declining installed ignition interlock devices.

¹⁸⁵ Roth, R. (2013). *2013 Survey of Currently-Installed Interlocks in the U.S.* Retrieved from http://www.rothinterlock.org/2013_survey_of_currently_installed_interlocks_in_the_us_revised-12_17_13.pdf

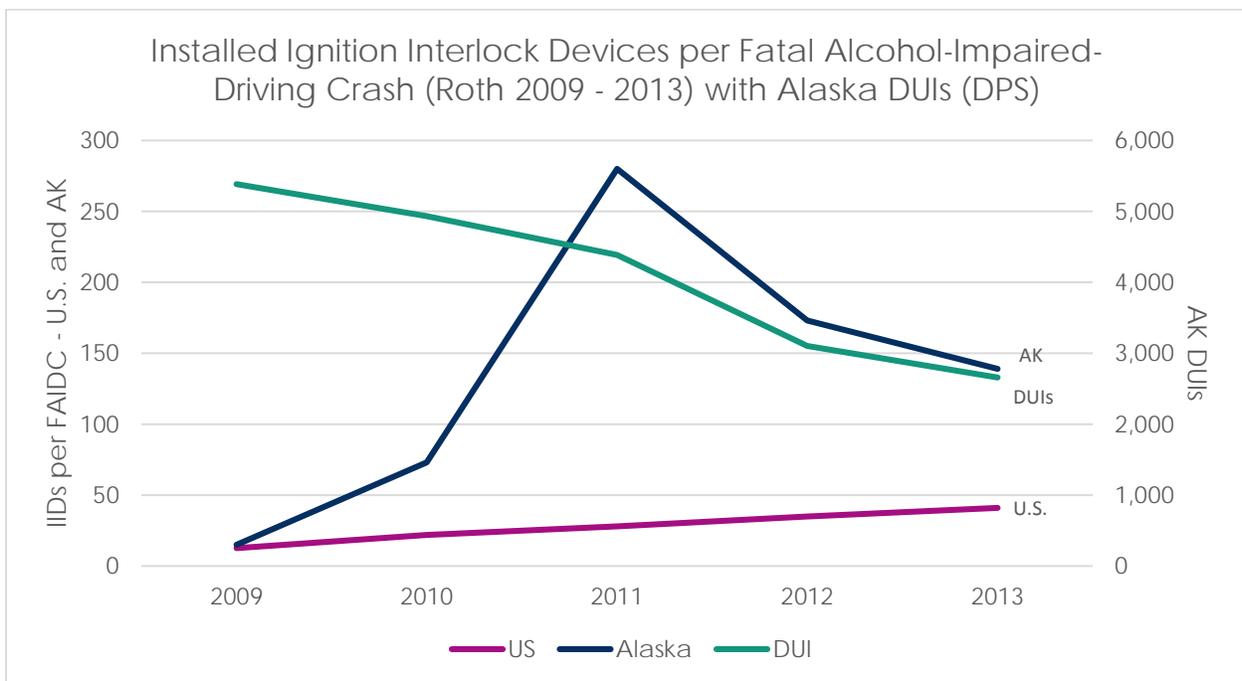
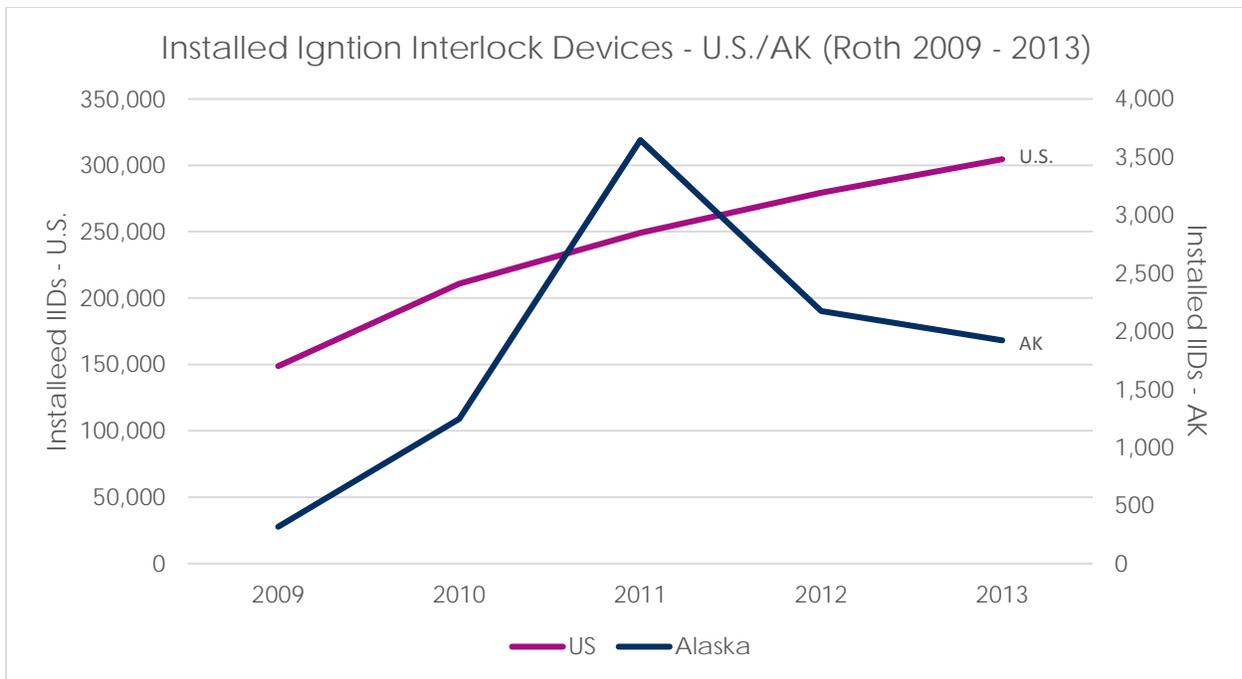
¹⁸⁶ *Id.*

¹⁸⁷ Alaska Department of Transportation. (n.d.). *Alcohol Impaired (Confirmed BAC >.08) Driving Fatalities and Fatal Crashes 1994-2014.* Retrieved from http://dot.alaska.gov/stwdplng/hwysafety/assets/pdf/Alcohol_Impaired_Driving_Fatalities_and_Fatal_Crashes_1994_2014.pdf

¹⁸⁸ Compiled from data at *Roth Interlock Research Data*, <http://www.rothinterlock.org/>

¹⁸⁹ Alaska Department of Public Safety, Criminal Records & Identification Bureau (2007-2014). *Crime in Alaska.* Juneau, AK, Retrieved from <http://www.dps.alaska.gov/statewide/ucr.aspx>

¹⁹⁰ Alaska Department of Transportation. (n.d.). *Alcohol Impaired (Confirmed BAC >.08) Driving Fatalities and Fatal Crashes 1994-2014.* Retrieved from http://dot.alaska.gov/stwdplng/hwysafety/assets/pdf/Alcohol_Impaired_Driving_Fatalities_and_Fatal_Crashes_1994_2014.pdf



Evidenced suggests that some DUI/OUI offenders routinely delay reinstating their driving privileges following the period of license revocation.¹⁹¹ Depending upon what assumptions are made, 38 percent to 44 percent of offenders in Alaska during 2013 and 2014 did not reinstate their driving privileges following the period of license revocation -- some portion of this may be attributable to offenders who did not comply with the ignition interlock order, as

¹⁹¹ Rogers, P. (2012). *Identifying Barriers to Driving Privilege Reinstatement among California DUI Offenders* (Cal-DMV-RSS-12-237). Elk Grove, CA: California Office of Traffic Safety. Retrieved from http://apps.dmv.ca.gov/about/profile/rd/r_d_report/Section_3/S3-237.pdf

compliance is required for license reinstatement. However, based on the available data, it is difficult to draw definitive conclusions concerning DUI/OUI convictions, license revocations and license reinstatements.

	License Reinstated following IID (DMV) ¹⁹²	Installed Ignition Interlock Devices ¹⁹³	DUI/OUI Arrests (DPS) ¹⁹⁴	Estimated DUI/OUI Convictions ¹⁹⁵
2015	1,450 ¹⁹⁶	N/A	N/A	N/A
2014	1,312	N/A	2,395	2,108
2013	N/A	1,922	2,658	2,339

Program Strengths

The Alaska ignition interlock program has multiple strengths.

- Being imposed by the court, the ignition interlock program naturally assumes the strengths inherent to that system. For example, where an administrative program might struggle with non-compliance, the court is able to bring meaningful sanctions to bear.
- All DUI/OUI offenders are subject to the ignition interlock sanction, which means that, in order to drive, all offenders must use an ignition interlock device during the sanction period; only one exception to this exists: an offender who drives an employer’s vehicle may drive that vehicle without an ignition interlock device installed.
- Installation of an ignition interlock device is a condition of license reinstatement, a condition that cannot be circumvented or ‘waited out’, i.e., the requirement does not expire at the end of the probation.¹⁹⁷
- Some financial offsetting is available to offenders. Court fees/fines may be reduced by the amount of the costs associated with the ignition interlock device.
- Hard-suspension periods are kept short in Alaska – for most offenders, 30 or 90 days. Long suspension periods may provide offenders the opportunity to ‘learn’ that they can drive unlicensed, further eroding the percentage of offenders who install ignition interlock devices.¹⁹⁸
- Efforts are coordinated with the DMV. DUI/OUI offenders, following the hard-suspension period, are issued a limited license with a ‘C’ restriction and the words “IID REQUIRED” printed on the back.¹⁹⁹ This provides law enforcement an additional opportunity to identify an offender driving a vehicle without an ignition interlock device; additionally, it dissuades car rental companies from abetting an offender.²⁰⁰
- Non-compliance and failed-breath tests are not grounds for dismissal from the program. Arguably, those who struggle the most are the most likely to recidivate and, as such, are most likely to benefit from a program that attempts to separate drinking and driving.²⁰¹
- There is device oversight. The Department of Corrections sets standards for the calibration, certification, maintenance and monitoring of ignition interlock devices.²⁰²

¹⁹² DMV, email, January 8, 2016.

¹⁹³ Compiled from data at *Roth Interlock Research Data*, <http://www.rothinterlock.org/>

¹⁹⁴ Alaska Department of Public Safety, Criminal Records & Identification Bureau (2007-2014). *Crime in Alaska*. Juneau, AK, Retrieved from <http://www.dps.alaska.gov/statewide/ucr.aspx>

¹⁹⁵ Based on work done by R. Jones et al. (1999), 88 percent of DUI/OUI arrests are assumed to result in convictions.

¹⁹⁶ Data from January – November 2015 only.

¹⁹⁷ Traffic Injury Research Foundation. (2012). *Alcohol Interlock Program Technical Assistance and Training: Alaska*. Ottawa, Ontario: Traffic Injury Research Foundation.

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² *Id.*

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Program Challenges

The Alaska ignition interlock program has multiple challenges.

- Low participation rate. According to a study of the Alaska ignition interlock program done in 2012, a ‘majority’ of eligible offenders either “fail to have the interlock ordered by the courts or fail to install the device even if they receive a judicial order to do so.”²⁰³
- There is no mechanism to track whether an offender complies with the court order and installs an ignition interlock device.²⁰⁴
- There is very little in the way of monitoring of offenders once an ignition interlock device is installed -- the device must be inspected (calibrated, maintained and checked for tampering) every 90 days by an authorized installer but the results of the inspection are merely ‘made available’ to relevant state agencies.²⁰⁵
- Data from ignition interlock device are not proactively collected or analyzed; for example, based on the result of failed-breath tests, tightening or adding sanctions.
- There is a lack of cellular or otherwise wirelessly-enabled ignition interlock devices, which would allow the imposition of timely sanctions.
- There are no graduated sanctions or performance-based exist criteria, e.g., must not blow positive during the final six weeks of sanction period.²⁰⁶
- There is a lack of vendor oversight. To ensure consistent practices, oversight of vendor protocols is important particularly in states with multiple vendors.²⁰⁷
- The ignition interlock sanction is not applied to remote areas of the state. While economies of scale are lacking in remote areas and an unconnected road system make it difficult for offenders to travel to vendors, there are individuals exempt from the sanction.²⁰⁸
- While most offenders in Alaska are evaluated for alcohol-abuse treatment, using the information collected from an ignition interlock device to inform and tailor treatment is a missed opportunity.

Statutory Authority

Driving Under the Influence

Implied Consent (AS 28.35.031)

A person who drives a motor vehicle in Alaska is considered to have given consent to a preliminary breath test to determine the alcohol content of his or her blood or breath. A law enforcement officer may administer such a test if he or she has probable cause to believe that a person was operating a motor vehicle and was impaired as a result of alcohol.

Refusal to submit to a preliminary breath test is an infraction.

The DMV: Administrative Revocations (AS 28.15.165)

If a person driving a motor vehicle refuses to submit to a breath test or has a blood-alcohol content of 0.08 or more as determined by a breath test,²⁰⁹ the person’s driver’s license is seized by the law enforcement officer and he/she

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ 0.08 grams or more of alcohol per 210 liters of breath

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is provided with a notice that acts as a temporary driver's license. The notice states that the Department of Motor Vehicles²¹⁰ intends to revoke the person's driver's license in seven days. The driver may request an administrative review of their license revocation but must do so prior to the end of the seven days.

The length of administrative license revocation follows the minimums as set out in AS 28.15.181 for court revocation (see *The Court: License Revocation* below).

The Court: Imprisonment and Fines (AS 28.35.030)

Upon conviction of driving while under the influence the court shall impose a minimum sentence of imprisonment of:

- not less than 72 consecutive hours and a fine of not less than \$1,500 if the person has **not been previously convicted**;
- not less than 20 days and a fine of not less than \$3,000 if the person has been previously convicted **once**;
- not less than 60 days and a fine of not less than \$4,000 if the person has been previously convicted **twice** and is not convicted of a felony;
- not less than 120 days and a fine of not less than \$5,000 if the person has been previously convicted **three** times and is not convicted of a felony;
- not less than 240 days and a fine of not less than \$6,000 if the person has been previously convicted **four** times and is not convicted of a felony;
- not less than 360 days and a fine of not less than \$7,000 if the person has been previously convicted **more than four** times and is not convicted of a felony.

Notwithstanding the fines listed above, if the court imposes probation under AS 12.55.102 (see *The Court: Ignition Interlock Device as Component of Probation* below) the court may reduce fines by the cost of the ignition interlock device.

A person is convicted of a class C felony if the person has been convicted two or more times since January 1, 1996, and within the 10 years of the current offense. In such cases, the court shall impose a minimum fine of \$10,000 and shall impose a minimum sentence of imprisonment of:

- not less than 120 days if the person has been previously convicted twice;
- not less than 240 days if the person has been previously convicted three times;
- not less than 360 days if the person has been previously convicted four or more times.

The Court: License Revocation (AS 28.15.181)

If the court convicts a person of driving under the influence or refusal to provide a breath test, the court will revoke that person's driver's license concurrent with or consecutive to an administrative revocation; the minimum periods of revocation are as follows:

- not less than 90 days if the person has **not been previously convicted**;
- not less than one year if the person has been previously convicted **once**;
- not less than 3 years if the person has been previously convicted **twice**;
- not less than 5 years if the person has been previously convicted **more than twice**.

The court may terminate a revocation for a DUI/OUI or refusal once the appropriate minimum period has elapsed and the driver meets certain conditions.²¹¹

²¹⁰ Definitions for title, Alaska Stat. § 28.90.990

²¹¹ Periods of limitation, suspension, revocation, or disqualification; opportunity for hearing and surrender of license, Alaska Stat. § 28.15.211(d)(e): "A person whose driver's license has been revoked may apply to the department for the issuance of a new license, but shall submit to reexamination, pay all required fees including a

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Where a person is convicted of a class C felony, the court shall permanently revoke the person's driver's license.²¹²

Ignition Interlock Devices

The Court: Ignition Interlock Device as Component of Sentence (AS 28.35.030)

Upon conviction of driving while under the influence the court shall require the offender to use an ignition interlock device after the offender regains the privilege to drive, including any limited privilege to drive, for a minimum of:

- six months if the person has **not been previously convicted**;
- 12 months if the person has been previously convicted **once**;
- 18 months if the person has been previously convicted **twice** and is not convicted of a felony;
- 24 months if the person has been previously convicted **three** times and is not convicted of a felony;
- 30 months if the person has been previously convicted **four** times and is not convicted of a felony;
- 36 months if the person has been previously convicted **more than four** times and is not convicted of a felony.

Where a person is convicted of a class C felony, the court shall require the offender to use an ignition interlock device after the offender regains the privilege to drive for a minimum of 60 months.

The Court: Ignition Interlock Device as Component of Probation (AS 12.55.102)

Following any administrative and/or court-ordered license revocation(s), the court may require a person convicted of an offense involving the use, consumption, or possession of an alcoholic beverage to drive only motor vehicles with ignition interlock devices installed throughout his or her period of probation, or, generally as part of the imposed sentence.

Furthermore, the defendant must surrender his or her driver's license whereupon he or she will be issued a certificate valid for the duration of the probation or a copy of the defendant's judgment of conviction.

Additionally, the defendant must certify that he or she understands the following provisions of the law:²¹³

- He or she is subject to the penalties for driving with a revoked license under AS 28.15.291 if the vehicle being driven is not equipped with an ignition interlock device outside of an exempt area.
- Circumventing or tampering with the IID is a class A misdemeanor under AS 11.76.140.
- AS 28.15.201(d) requires that up-to-date service and calibration records for the ignition interlock device must be maintained and carried in the vehicle throughout the period of the limited license.

reinstatement fee, and, if the license was revoked under AS 28.15.181 (a)(5) or (8) (operating a motor vehicle or aircraft while under the influence of an alcoholic beverage, inhalant, or controlled substance, or, refusal to submit to a chemical test [...] while under arrest for operating a motor vehicle [...] while under the influence), submit proof to the court or the department that the person has met the alcoholism screening, evaluation, referral, and program requirements of the Department of Health and Social Services under AS 28.35.030 (h). [Also,] At the end of a period of limitation, suspension, or revocation under this chapter, the department may not issue a driver's license or a duplicate driver's license to the licensee until the licensee has complied with AS 28.20 relating to proof of financial responsibility."

²¹² A process exists to reinstate a driver's license following a felony DUI/OUI; that process is outside the scope of this document.

²¹³ Alaska Department of Administration. (n.d.). *General Information - Ignition Interlock Limited Licenses (AS 28.15.201)*. Retrieved from http://doa.alaska.gov/dmv/reinst/PDFS/Limited_IID.pdf

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Finally, the defendant is required to pay all costs associated with fulfilling the condition of probation, including installation, repair, and monitoring of an ignition interlock device. As mentioned above (*The Court: Imprisonment and Fines*), the cost of the ignition interlock device may be deducted from the fine imposed at sentencing.

Ignition Interlock Device Oversight

The Alaska Department of Corrections Commissioner (AS 33.05.020)

The Alaska Department of Corrections Commissioner is responsible for ignition interlock device certification. The Commissioner shall by regulation:

- Establish standards for calibration, certification, maintenance, and monitoring of ignition interlock devices required as a condition of probation under AS 12.55.102; and
- Establish a fee to be paid by the manufacturer for the cost of certifying an ignition interlock device.

Limited Licenses

The Court/DMV: Limitation of Driver's License (AS 28.15.201)

The court or the DMV may grant limited license privileges during the period of license revocation under certain conditions.

- The offender must have been convicted of driving under the influence; an offender who refused to submit to a breath test may not be granted a limited license.
- If
 - It is the first offense, the limited license may not be granted during the first 30 days of revocation.
 - It is not the first offense, the limited license may not be granted during the first 90 days of revocation.
- The offenders uses an ignition interlock device and adheres to all conditions.
- The offender has successfully completed or is in compliance with alcohol screening and treatment.
- The offender provides adequate proof of insurance as required by AS 28.20.230.

Additionally,

- The person may not be currently revoked, suspended, denied or cancelled in another state.²¹⁴
- The person may not have been convicted of DUI/OUI or refusal while on probation for a prior DUI/OUI or refusal conviction.²¹⁵

At the end of the revocation period, the person can reinstate his/her driving privileges by successfully passing the required tests, paying the reinstatement and licensing fees and providing proof of the following: SR-22 insurance filing (or posting a \$125,000 bond), ignition interlock device compliance, and ASAP satisfaction.²¹⁶

Ignition Interlock Device Certification

Ignition Interlock Devices certified in Alaska

As of December 2015, five vendors are certified to provide ignition interlock devices in Alaska; they are:²¹⁷

- Draeger Safety Diagnostics (Updated 3/4/15)
- Guardian Interlock Systems (Updated 11/2/15)

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ Alaska Department of Administration. (n.d.). *FAQ - Restrictions Due to Drinking and Driving*. Retrieved from http://doa.alaska.gov/dmv/reinst/PDFS/FAQ_Alcohol.pdf

²¹⁷ Alaska Department of Corrections. (n.d.). *Ignition Interlock Device Certification*. Retrieved December 2, 2015, from <http://www.correct.state.ak.us/administrative-services/ignition-interlock-device-certification>

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- LifeSafer Interlock (Updated 12/7/15)
- Alcohol Detection Services (Updated 10/12/15)
- Smart Start (Updated 12/2/15)

Ignition Interlock Device Models Certified by Judicial Districts ²¹⁸					
Vender/model of IID	Judicial Districts				Locations within districts serviced
	1 st	2 nd	3 rd	4 th	
Draeger XT			X		All
Guardian Model #AMS 2000	X		X	X	All
LifeSafer Interlock, Inc. Model #Fc100			X		All
Alcohol Detection Services Determinator DM-904			X		Some
Alcohol Detection Services Determinator DM-909			X		Some
Smart Start, Inc. Model #SSI-20/20			X		All
Smart Start, Inc. Model #SSI-20/30			X		All

Device Certification

The Ignition Interlock Device Certification Application must be submitted to the Alaska Department of Corrections; the application requires a fee of \$1,000 for each initial certification and \$500 for each renewal.²¹⁹

Applicants submitting an ignition interlock device for certification must provide the following information:

- The State of Alaska Judicial District(s) for which the device is to be certified.²²⁰
- Provide proof from a testing laboratory that the vendor's device meets or exceeds standards set by Alaska statute and regulation.²²¹
- Provide a list of authorized installers (who are qualified to install, calibrate, maintain and remove the devices) and their addresses.²²²
- A copy of the label that will be displayed on the device, as required by 22 AAC 15.030, which articulates the following:
 - The warning as set out in AS 33.05.020 (e): 'a person circumventing or tampering with the device in violation of AS 11.76.140 may be imprisoned up to 30 days and fined up to \$500'.
 - The temperature range within which the device is operable without the need for pre-warming or other special steps being taken.
 - Instructions for pre-warming the device or otherwise making the device functional in temperatures below the temperature range specified above.
 - The warning that the failure to follow pre-warming instructions for the device in extreme cold weather conditions may make the vehicle inoperable and that the vehicle with such a device should not be relied upon as a survival tool in such conditions.²²³

²¹⁸ *Id.*

²¹⁹ Alaska Department of Corrections. (n.d.). *Ignition Interlock Device Certification Application*. Retrieved from [http://www.correct.state.ak.us/commish/docs/Application for Device Certification.pdf](http://www.correct.state.ak.us/commish/docs/Application%20for%20Device%20Certification.pdf)

²²⁰ *Id.*

²²¹ *Id.*

²²² *Id.*

²²³ *Id.*

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Certification standards:

- The device must meet or exceed standards set by the National Highway Traffic Safety Administration’s model specifications as found in the Federal Register, Vol. 57, No. 67, April 7 1992, docket No. 91-07, Notice 2.²²⁴
- The device must also be capable of being preset by the manufacturer's authorized installer to prevent ignition when the breath alcohol in the breath sample is above .025 percent concentration; additionally, the device must be designed to prevent an adjustment not authorized by the manufacturer's installation or maintenance standards.²²⁵

Required reporting

- The device must be inspected (re. calibration, maintenance and tampering) every 90 days by the authorized installer.²²⁶
 - Calibration, maintenance and tampering evidence must be kept by the authorized installer for at least three years and provided, upon request, to authorized agencies.²²⁷
 - If there is evidence of tampering or an attempt to circumvent the device, the authorized installer must report to appropriate agencies within 72 hours.²²⁸

Ignition Interlock Device History

The following is verbatim from R. Schmitz’s 2009 presentation, *Ignition Interlock Devices in Alaska*²²⁹:

Year	Legislative Change
1989	<ul style="list-style-type: none"> - AS 09.50.250 - Can’t sue the state for an action arising from use of ignition interlock - AS 12.55.102 – New sentencing statute <ul style="list-style-type: none"> ▪ IID may be condition of probation - AS 11.76.140 – Avoidance of IID a misdemeanor
1989	<ul style="list-style-type: none"> - AS 28.35.030(DUI) and AS 28.35.032 (Refusal) are amended to provide that probation may include IID - AS 33.05.020(c) is added to require DOC Commissioner establish IID standards (33.05.020(c) has not been amended since)
1995	<ul style="list-style-type: none"> - Legislature enacts Felony DUI and Refusal statutes <ul style="list-style-type: none"> ▪ Both still potentially eligible for IID as probation condition. ▪ AS 28.15.201 (Limited licenses) does not yet address IIDs
2004	<ul style="list-style-type: none"> - IID now may be part of a sentence for alcohol related crime - AS 28.15.201(d) Changes when a limited license may be issued by court or DMV – includes use of IIDs, but still provides that no Limited License for felony, repeat offender, or refusal - AS 28.35.030(s) added to require IID for six months when breath test is .16 or over <i>after</i> privilege to drive is restored (one year of .24 or over) Not dependent on probation
2008	<ul style="list-style-type: none"> - New Ignition Interlock law passed <ul style="list-style-type: none"> ▪ All DUI and Refusal sentences include, “the court shall . . . require the person to use an ignition interlock device after the person regains the privilege . . . to operate a motor vehicle for a minimum of ___ months/years <i>during the period of probation . . .</i>”

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ *Id.*

²²⁹ Schmitz, R. (2009). *Ignition Interlock Devices in Alaska* [PowerPoint slides]. Retrieved from http://www.correct.state.ak.us/commish_corner/powerpoint/040409_ignition_interlock.ppt

Appendix A: DUI/Refusal Chart

		DUI/Refusal – Consequence Chart						
Implied Consent	Offense number (misdemeanors)	Administrative revocations (DMV)	The court shall impose a minimum sentence of imprisonment/fine of: ¹	The court shall revoke driver's license for:	The court shall require an IID for a minimum of: ²	Probation length	IID during probation ³	Limited License
AS 28.35.031 Drivers are considered to have given consent to a preliminary breath test to measure alcohol content of their blood or breath. Drivers may refuse breath test but refusal is an infraction.	First offense	AS 28.15.165	AS 28.35.030 not less than 72 consecutive hours and a fine of not less than \$1,500	AS 28.15.181 not less than 90 days	AS 28.35.030 6 months	-- 10 years	AS 12.55.102	AS 28.15.201 Limited license may be granted after 30 days of revocation for a DUI (not refusal)
	Second offense		not less than 20 days and a fine of not less than \$3,000	not less than one year	12 months	"	The court may order probation or generally as part of a sentence	Limited license may be granted after 90 days of revocation for a DUI (not refusal)
	Third offense		Revocation of the person's driver's license (for a DUI or refusal) takes effect seven days after delivery of the notice to the person – for length of revocation, see AS 28.15.181	not less than 60 days and a fine of not less than \$4,000 (if not felony)	not less than 3 years	18 months	"	that a defendant convicted of a DUI may not operate a motor vehicle during the period of probation unless the vehicle is equipped with an IID. ⁴
	Fourth offense			not less than 120 days and a fine of not less than \$5,000 (if not felony)	not less than 5 years	24 months	"	Also, surrenderer DL; issue certificate ⁵
	Fifth offense			not less than 240 days and a fine of not less than \$6,000 (if not felony)	"	30 months	"	"
	Sixth or greater			not less than 360 days and a fine of not less than \$7,000 (if not felony)	"	36 months	"	"

¹ Notwithstanding the fines listed in this section, if the court imposes probation under AS 12.55.102 the court may reduce fines by the cost of the ignition interlock device.
² The period during which an ignition interlock device is required begins after the offender regains the privilege to drive (and is subsequent to the period an offender may have a limited privilege to drive).
³ Exception: Due to the State's large land area and dispersed population, offenders are not required to use an ignition interlock device if they operate a motor vehicle in certain communities, namely, communities in which car registration/insurance is not required (AS 28.22.011).
⁴ Exception: The court, in imposing probation or a condition of a sentence under (a) of this section, may allow the defendant limited privileges to drive a motor vehicle without an ignition interlock device if the court determines that the defendant is required as a condition of employment to drive a motor vehicle owned or leased by the defendant's employer and that the defendant's driving will not create substantial danger. If the court imposes probation described by this subsection, the court shall require the defendant to notify the defendant's employer of the probation, and shall require that the defendant, while driving the employer's vehicle, carry a letter from the employer authorizing the defendant to drive that vehicle. (AS 12.55.102)
⁵ A court imposing a condition of probation under this section shall require the surrenderer of the driver's license and shall issue to the defendant a certificate valid for the duration of the probation or a copy of the defendant's judgment of conviction. The defendant shall pay all costs associated with fulfilling the condition of probation, including installation, repair, and monitoring of an ignition interlock device.

Appendix B: Cost-Benefit Analysis

The Centers for Disease Control and Prevention host a cost/benefit tool called the *Motor Vehicle Prioritizing Interventions and Cost Calculator for States (MV PICCS)*. As the name implies, it offers state-specific estimates of various motor-vehicle-related interventions.

Per *MV PICCS*, the annual cost/benefit of the Alaska ignition interlock program is as follows.

Alaska Ignition Interlock Device Program - Estimated Annual Cost/Benefit ²³⁰		
Costs		
Cost to State		\$149,000
Offender-Borne Cost		\$939,072
Benefits		
	Count	Monetized Benefit
Fatalities Averted	0.24	\$557,000
Injuries Averted	8.66	

As with any cost-benefit analysis, not all costs or benefits are included in this analysis. An ignition interlock sanction may impact an offender's employment, which would increase the offender-borne cost. Alternatively, an offender who does not continue to drink and drive is less likely to have medical expenses (both large and small), which may increase monetized benefits. In sum, a cost-benefit analysis is only one of many factors that may be used to judge the relative value of an intervention.

c. Costs

The cost to implement the ignition interlock program in Alaska is \$149,000 per year, according to *MV PICCS*; specifically, 2.5 state employees to 'market, contract and manage the program'.²³¹ No other program costs are included in the model.

It is unknown whether this reflects the true costs of the ignition interlock program in Alaska. Based on information publicly available, there is one employee in the Alaska Department of Corrections who handles the contracting with ignition interlock vendors; additionally, the Department of Corrections Commissioner is statutorily required to establish ignition interlock 'standards and certification fees'.^{232,233}

In order to comply with an ignition interlock order, an offender must have an ignition interlock device installed on his/her vehicle; the cost of the device installation, rental, maintenance and removal is paid to a private, third-party vender.²³⁴ *MV PICCS* estimates that the cost borne per offender per year is \$402 nationally (Alaska-specific cost is not provided); however, per *MV PICCS*, this cost may or may not include the costs associated with installation and removal of the ignition interlock device.²³⁵

²³⁰ Centers for Disease Control and Prevention. (2015). *Motor Vehicle Prioritizing Interventions and Cost Calculator for States (MV PICCS) 2.0*. Retrieved from <http://www.cdc.gov/motorvehiclesafety/calculator/index.html>

²³¹ Centers for Disease Control and Prevention. (2015). *Motor Vehicle Prioritizing Interventions and Cost Calculator for States (MV PICCS) 2.0, Project Report and User Guide*. Retrieved from <http://www.cdc.gov/motorvehiclesafety/calculator/doc/index.html>

²³² Alaska Department of Corrections. (n.d.). *Ignition Interlock Device Certification*. Retrieved December 2, 2015, from <http://www.correct.state.ak.us/administrative-services/ignition-interlock-device-certification>

²³³ Limitation of driver's license, Alaska Stat. § 28.15.201

²³⁴ *Id.*

²³⁵ Centers for Disease Control and Prevention. (2015). *Motor Vehicle Prioritizing Interventions and Cost Calculator for States (MV PICCS) 2.0, Project Report and User Guide*. Retrieved from <http://www.cdc.gov/motorvehiclesafety/calculator/doc/index.html>

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$$\frac{\$939,072 \text{ (total offender – born costs per year)}}{\$402 \text{ (cost per offender per year)}} = 2,336 \text{ offenders}^{236}$$

According to *MV PICCS*, as no fines are associated with the Alaska ignition interlock program, and, as all fees associated with ignition interlock compliance are paid to private, third-party vendors, the Alaska ignition interlock program does not generate revenue or off-set its operational expenses.

	Program Expenditures	Fines/Fees Collected	Total Cost
Alaska Ignition Interlock Device Program	\$149,000 ²³⁷	\$0	\$149,000

d. Benefits

The effectiveness or benefit of the intervention is defined as the total annual monetized value of lives saved and injuries prevented, specifically \$557,000.²³⁸ As with the other values, this is calculated using state-dependent information.²³⁹

- State-adjusted cost per fatality is \$1,530,008²⁴⁰
- State-adjusted cost per injury is \$21,911.²⁴¹

The fatalities/injuries averted and the monetized benefit of each are listed below:

	Unit Cost	Count	Sub-Total	Total
State-adjusted cost per fatality	\$1,530,008 ²⁴²	0.24	\$367,222	\$557,000
State-adjusted cost per injury	\$21,911 ²⁴³	8.66	\$189,778	

²³⁶ The *Motor Vehicle Prioritizing Interventions and Cost Calculator for States* model uses FBI data from 2011 to calculate this statistic, specifically, 4,420 offenders per year; however, to calculate the number used in this document, 2014 FBI data was substituted. As an aside, it's unclear why FBI data and DPS data (page 6 of this document) differ, as it seems that the DPS data feeds directly into the data that becomes the FBI data (Uniform Crime Reports).

²³⁷ Centers for Disease Control and Prevention. (2015). *Motor Vehicle Prioritizing Interventions and Cost Calculator for States (MV PICCS) 2.0*. Retrieved from <http://www.cdc.gov/motorvehiclesafety/calculator/index.html>

²³⁸ Centers for Disease Control and Prevention. (2015). *Motor Vehicle Prioritizing Interventions and Cost Calculator for States (MV PICCS) 2.0, Project Report and User Guide*. Retrieved from <http://www.cdc.gov/motorvehiclesafety/calculator/doc/index.html>

²³⁹ *Id.*

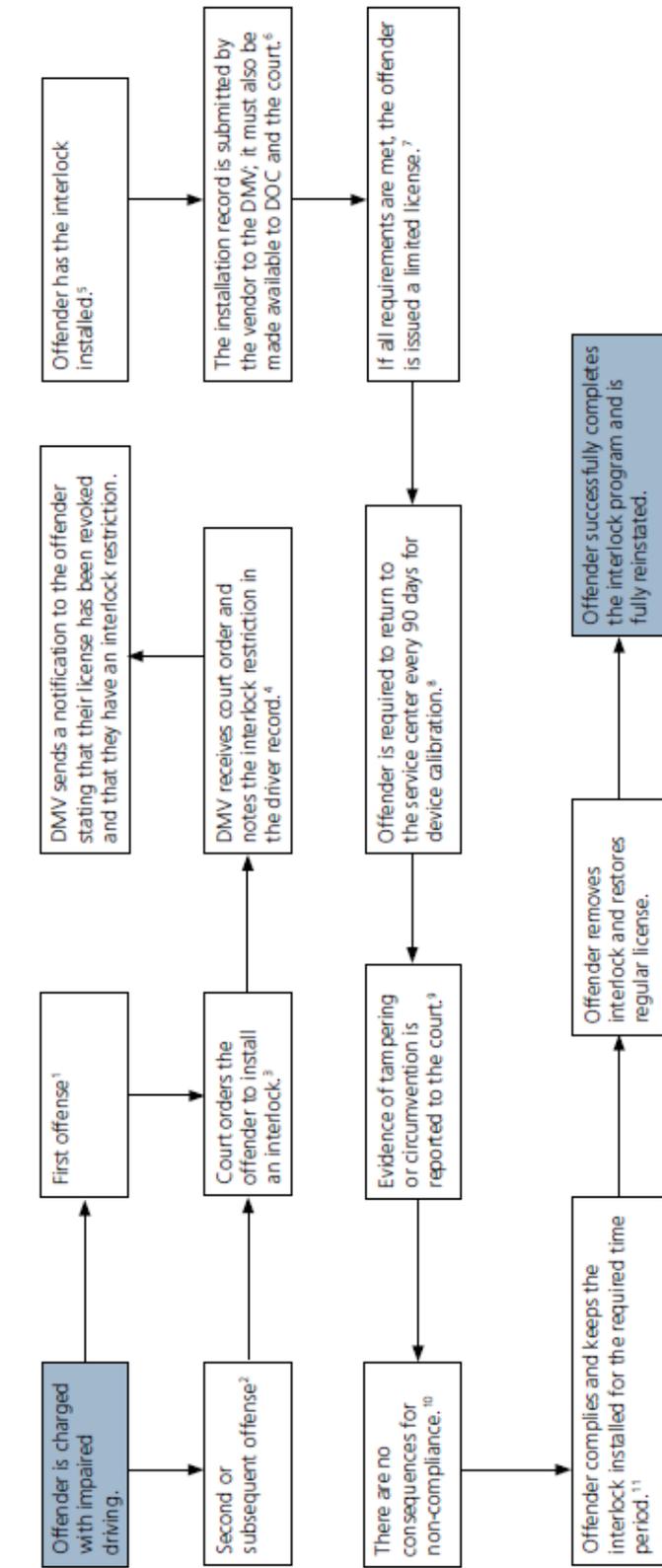
²⁴⁰ Centers for Disease Control and Prevention. (2015). *Motor Vehicle Prioritizing Interventions and Cost Calculator for States (MV PICCS) 2.0*. Retrieved from <http://www.cdc.gov/motorvehiclesafety/calculator/index.html>

²⁴¹ *Id.*

²⁴² *Id.*

²⁴³ *Id.*

Appendix C: Alaska Workflow Chart



Traffic Injury Research Foundation (2012)

1. First offenders are required to participate in the interlock program. The average length of suspension for a first DUI is 90 days; however, first offenders are eligible to apply for the limited interlock license after serving a 30 day hard suspension. The average length of suspension for a first DUI is 90 days. The interlock must remain installed on a first offender's vehicle for a minimum of six months.
2. Repeat offenders are also mandated to participate in the interlock program. Repeat offenders receive suspension periods of one year (2nd offense), three years (3rd offense), five years (4th and subsequent offense), or a lifetime driving prohibition. Repeat offenders must serve a 90 day hard suspension before being eligible to apply for the limited interlock license. The interlock must remain installed on a repeat offender's vehicle for a period of 12-24 months: 2nd offense (in 15 years) – 12 months; 3rd offense (in 15 years) – 18 months; 4th offense (in 15 years) – 24 months.
3. Offenders can offset court fines by the costs associated with participating in the interlock program; this gives them an incentive to install the device.
4. The offender will be notified at the time of judgment that they are required to install an interlock device. Once the DMV (under the umbrella of the Department of Administration) receives the court order, they will annotate the driver record and not the interlock requirement in the driver records system. It takes approximately 7-10 days for court orders to be received by the DMV.
5. An offender must install the interlock device before being eligible to receive the limited interlock license. The average cost for installation is \$75-250 and the average cost for servicing is \$100/ month. The preset BAC level of the interlock device is .025. Employer exemptions are available in Alaska. The offender must provide proof to the court that driving is required as a condition of employment in a vehicle owned/leased by the employer, that such driving will not create a substantial danger, and that the vehicle is not a commercial vehicle.
6. An installation record must be maintained that includes: The name, address, and telephone number of the person requesting the installation; The name and address of the vehicle's registered owner; The year, make, model, vehicle ID number, and license plate number; The manufacturer, model name, and number of the interlock device installed; The name of the manufacturer's authorized installer performing the installation; and, The date of installation.
7. In order to obtain an interlock license, an offender must: Complete an application; Pass any required test; Pay a \$100 processing fee; Show proof of IID installation; Satisfy the Alcohol Safety Action Program (ASAP) requirements; and, Provide proof of financial responsibility.
The DMV cannot issue a limited license for refusal convictions, felony DUI convictions, drugged driving, for operating commercial vehicles, or if the offender is currently revoked/suspended in another state.
There are certain rural areas of the state where offenders are not required to have the interlock and are exempt from the limited license because servicing is not available; however, their license remains restricted in the event that they enter an urban area and attempt to drive.
The DMV is required to place a 'C' restriction on the limited license; the back of the license will state "IID REQUIRED" under the heading "Restrictions."
8. A calibration, maintenance, and monitoring record must be maintained which includes: Results of examination; Any calibration adjustments; Documentation of any evidence of tampering/circumvention; Other information required by a court order; and, Name of the technician.
9. Tampering/circumvention of the interlock is considered a separate misdemeanor and can be punishable by up to a year in jail.
10. There are no consequences for interlock program non-compliance unless the court considers it to be a probation violation. Offenders are not removed from the program if they have failed breath tests however, four violations within a month will lead to a lockout.
11. An interlock device must not be removed before the date authorized by the court. It is the offender's responsibility to know when they are eligible to remove the device (the DMV does not provide notification to the offender).

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