OFF THE ROADS & OUT OF THE COURTS: ENTER A TECHNOLOGY FIX FOR DRUNK DRIVING

Nora J. Pasman-Green
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By Nora J. Pasman-Green

Introduction ~ Could There Be a Fix?

If the statistics are accurate, then like many people in America, I know someone who has been convicted of drunk driving. When this young man (and yes, most convicted drunk driving offenders are men) was sentenced, a condition of his probation was that he had to install an alcohol ignition interlock device (“AIID”) on his car. For as long as he was on probation, his car would not start until this machine certified that he had not been drinking. I wished he would be on probation for the rest of his life.

Perhaps I am naïve. AIIDs were news to me. But, once I learned how these devices worked, and how they will work in the future, its implications were astounding. AIIDs, it seems, have the potential to virtually eliminate drunk driving liability, both criminal and civil. Even more important, AIIDs could rid the road of drunk drivers who turn their automobiles into deadly weapons. After all, drunk driving is not simply a criminal violation; drunk driving has become a major public health problem. Why, I wondered, isn’t this thing standard equipment on all vehicles? It turns out that I was way behind the curve on these questions, too.

Scholars, scientists, policymakers, and public advocacy groups have been exploring and debating how effectively AIIDs accurately prevent someone from driving drunk for years. AIIDs measure blood alcohol content (BAC), which is the underlying scientific evidence of driving impairment. Indeed, the technology supporting AIIDs has steadily improved. Progress toward a consensus that identifies and ranks the potential goals that can be achieved with the AIID technology is slowly crystallizing. AIIDs have their found into way into legislation, both nationally and internationally, at least so far as aiming at repeat offenders. And, the feasibility and effectiveness of installing AIIDs as standard equipment on vehicles has, indeed, been envisioned as the ultimate solution.

But, when asked point-blank about whether having an AIID as standard equipment on all cars to prevent anyone from driving under the influence, few think this is a good idea. (Except, understandably, my friend whose brother was killed by a drunk driver who

1 Professor of Law, Thomas M. Cooley Law School. The author gratefully acknowledges the assistance of Gabrielle Paschall, research assistant.

2 See infra notes 19, 31 & accompanying text for specific statistics on drunk driving arrests and convictions.


4 See infra notes 66, 67, 115.

5 BAC, as evidence of impairment has withstood legal challenges. See infra note 43.
entered the interstate through an exit ramp and hurled head-on into a car driven by a fifty-
year-old husband and father of young children.) Most folks react as if the suggestion
were the ultimate threat to fundamental freedom. They have the right to drink! They
have the right to drive! But silence reigns when I ask, does anyone, under any
circumstances, have the right to drive drunk?

No one in their politically-correct mind would say yes. While Americans have jealously
protected their right to drink,6 we have long-standing objections to drunk driving.
Nonetheless, while we willingly subject ourselves to the “rules of the road,” we believe
we have a right to drive as long as we obey them.7 Would AIIDs be a tolerable
infringement of that right in service of the public safety goal of eliminating drunk drivers
from our streets? If it were impossible for anyone to drive drunk because they simply
could not start the car, it could mean that no driver would ever become embroiled in the
criminal justice system for drunk driving. It is mind-boggling to imagine how many
other crimes would be thwarted if no one could drive to the scene to commit it.8

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6 Despite the earnest attempts of the Temperance Movement, the right to drink became constitutionally
protected in 1933. U.S. Const. amend. XVIII, repealed by U.S. Const. amend. X XI. For a full account of the
history of the Temperance Movement and the attempts to limit alcohol consumption in America, see
David J. Hanson, National Prohibition of Alcohol in the U.S.,
http://www2.potsdam.edu/hansondj/controversies/1091124904.html (last visited July, 10, 2010).
7 Whether driving is, strictly speaking, a “right” or a “privilege” is a debate that is not particularly helpful in
this context. Certainly, most Americans regard the automobile as essential. “[T]he independent mobility
provided by an automobile is a crucial, practical necessity; it is undeniable that whether or not a person
can obtain a driver’s license or register and operate his motor vehicle profoundly affects important
aspects of his day-to-day life.” Victor M. Norris & Michael F. Smith, Photo Finish: Calling into Question
Attorney General, 402 Mich. 554, 598 (1978)). “American law enveloped the right to drive into an
increasingly narrow corner. Although constantly mentioned in the first era of traffic regulation, the right
to travel by the vehicle of one’s choice has slowly faded into distant memory and has been lost to history.
. . . Since 1950, no court has described driving an automobile as a ‘right.’ The constitutional right to travel
became increasingly interpreted not as a right to locomotion by the means of one’s choice, but as a mere
right to emigrate between states. . . . Today, traffic bureaus refer to driving a motor vehicle only as a
privilege.” Roger Roots, The Orphaned Right: The Right to Travel by Automobile, 1890-1950, 30 OKLA. CITY
U. L. REV. 245, 266-67 (2005). Nonetheless, courts have stated: “A casual acceptance in the cases that a
right to drive in this American society is not ‘fundamental’ lacks both economic and logical application to
this present real world. The automobile is of the essence of this country’s functional conduct as a society
and is also totally intrinsic to the behavior and aspiration of most Americans, not to mention its
foundational place within the national economy. Food might be sacrificed, but never the automobile.”
unconstitutional a Wyoming statute revoking the driver’s licenses of teenagers convicted of underage
drinking). See also Campbell v. State, Dept’ of Revenue, Div. of Motor Vehicles, 491 P.2d 1385 (Colo.
1971). Still, as the United States Supreme Court recognized in Sherbert v. Verner, 374 U.S. 398, 404
(1962), the distinction between “privilege” and “right” is not meaningful when the benefit in question,
i.e., being able to drive a car and thereby conduct normal life activities, is the same. See also Peninna
Oren, Veiled Muslim Women and Driver’s License Photos: A Constitutional Analysis, 13 J.L. & Pol’y 855, 913
(2005).
8 Studies of offenders convicted of crimes involving strangers, or committed at locations other than the
offender’s home, show that nearly a third were severely intoxicated at the time they committed the
crime. See United States Department of Justice, Bureau of Justice Statistics, Alcohol and Crime: An
Could there come a day when no one who is demonstrably too impaired to drive, could turn the key in the ignition and drive off? What if people who misjudge their sobriety could no longer drunkenly turn their cars into deadly weapons? What if the daily blood bath on the highways and byways of America finally pulled to a stop?

**How Big is the Problem**

In the last thirty years, public intolerance of drunk driving found its voice in a variety of grassroots organizations, most notably, Mothers Against Drunk Driving (MADD). During the early 1980s concerns about the dangers associated with drunk driving entered the political arena. Legislators across the country responded by reforming drunk driving laws to mandate stricter enforcement and impose harsher penalties. The National Highway Traffic Administration (NHTSA) has poured millions of dollars into publicity campaigns to heighten public awareness of the dangers of drunk driving. Analysis of National Data on the Prevalence of Alcohol and Involvement in Crime (1998), available at http://bjs.ojp.usdoj.gov/content/pub/pdf/ac.pdf [hereinafter DOJ, Alcohol and Crime]. In 1996, for example, the number of persons under correctional supervision who committed a crime after drinking exceeded 1.9 million. *Id.* at 9.

9 See infra notes 40-42 and accompanying text for discussion of legal standards for impaired driving.

10 No street in America is immune from the drunk driver. See, generally, NHTSA data which demonstrates that alcohol-related fatal crashes occur at any speed, and on all types of streets (e.g., one-way streets, two-way roads, divided highways, interstate freeways). National Highway Traffic Safety Administration, Fatality Analysis Reporting, Trafficway Flow, http://www.nhtsa.gov/FARS (last visited July 16, 2010).


13 *Id.* See infra notes 37, 58-68 and accompanying text.

Initially, these measures seemed to deter drunk driving because the number of arrests decreased by about twenty-eight percent during the late 1980s and early 1990s. Fewer arrests suggested that less people were driving drunk, increasing the safety of roads.


Any initial, modest reductions in alcohol-related crashes, arrests, and convictions during the 1980s did not continue. Despite harsher statutory penalties, more comprehensive treatment opportunities and obligations for offenders, and ongoing public awareness efforts, the sobering evidence is that drunk driving remains largely undeterred. In 2008, there were 1,483,396 arrests for driving under the influence. Arrest and conviction statistics do not tell the whole story: Studies demonstrate that when a first-time offender is arrested he or she, on average, has driven eighty-seven (87) other times while over the legal limit. Research finds up to seventy-five percent of offenders drive illegally after license suspension.

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16 See infra notes 37, 58-68 and accompanying text.
17 See infra notes 37, 58-68 and accompanying text.


21 U.S. Department of Transportation, National Highway Traffic Safety Administration, DOT HS 811 246, IIDs – What You Need to Know: A Toolkit for Policymakers, Highway Safety Professionals, and Advocates,
In 2008, thirty-one percent of the nation’s fatal crashes involved alcohol-impaired driving.\(^{23}\) In total, 11,773 people were killed in these alcohol-impaired-driving crashes.\(^{24}\) An additional 255,500 are injured in motor vehicle crashes involving an alcohol-impaired driver.\(^{25}\) On average, a drunk driver kills someone every forty-five minutes.\(^{26}\) If this trend continues, studies indicate that thirty percent of all Americans will be involved in an alcohol-related car accident during their lifetime.\(^{27}\)

Not only does drunk driving endanger Americans’ lives and well being, but alcohol-related crashes cost the country over $51 billion dollars annually.\(^{28}\) This represents over twenty-two percent of all crash costs in this country.\(^{29}\) Crash figures do not tell the whole story, of course. Many drunk drivers do not cause crashes, but the law enforcement and judicial systems suffer substantial economic hemorrhaging nonetheless. The police time consumed in drunk driving stops and arrests is not included, for example.


23 Alcohol-impaired driving means that at least one of the motor-vehicle operators had a BAC of .08 or higher. Id.


27 Dewey-Kollen & Donwes, supra note 20, at 16.

28 This figure accounts for twenty-two percent of all crash costs. It includes “productivity losses, property damage, medical costs, rehabilitation costs, travel delay, legal and court costs, emergency services (such as medical, policy, and fire services), insurance administration costs, and costs to employers. Values for more intangible consequences such as physical pain or lost quality of life are not included in this estimate . . . .” DOT HS 809 446, supra note 24, 1-2. What is not included in this figure is the impact alcohol-related accidents have on emergency rooms. A recent study disclosed that drivers in motor vehicle crashes who were discharged from the emergency departments had total charges and lengths of stay that were substantially higher (by $4,538 and 3.3 hours) when there was evidence of alcohol involvement. Michael H. Lee, Michael J. Mello & Steven Reinert, Emergency Department Charges for Evaluating Minimally Injured Alcohol-Impaired Drivers, 54 Annals of Emergency Med., 593, 597 (2009).

29 The impact of alcohol involvement increases with injury severity. Alcohol-involved crashes accounted for ten percent of property damage only (PDO) crash costs, twenty-one percent of nonfatal injury crash costs; and forty-six percent of fatal injury crash costs. DOT HS 809 446, supra note 24, at 9.
On average, the costs to arrest, prosecute, and convict an offender exceed $50,000. But, the costs don’t stop there. Most convicted offenders are placed on probation. Each year, offenders placed on probation end up costing more than $1.6 billion. Overall, the penal system is overloaded. “Corrections” has been one of the fastest growing consumers of state budgets.

And consider, too, what happens to the life of the offender, quite apart from the effect of drunk driving on the criminal justice system, or on the people injured or the property damaged in a drunk driving incident. Many a reputation has been irrevocably tarnished by a drunk driving arrest. From arrest to completion of probation, the experience is


31 In 1997, an estimated 513,200 drunk driving offenders were under correctional supervision, double the number from a decade earlier. Convicted offenders in jail were sentenced to serve on average eleven months; half were sentenced to at least six months. Offenders sentenced to prison served on average forty-nine months; half were sentenced to serve at least three years. Among those on probation, the average sentence length was twenty-six months; half were sentenced to serve two years or more. Among those on probation, thirty-one percent received a split sentence and were incarcerated for a period for their current drunk driving offense. An estimated twenty-nine percent had served time in a local jail, and two percent in a State prison. U.S. Department of Justice, Bureau of Justice Statistics Special Report, Laura M. Maruschak, DWI Offenders under Correctional Supervision (1999), available at http://bjs.ojp.usdoj.gov/content/pub/pdf/dwiocs.pdf [hereinafter DOJ, Maruschak]. For example, in 1997, almost nine in ten (eighty-nine percent) convicted offenders were on probation. American Probation and Parole Association, Karen L. Dunlap, Tracy G. Mullins & Marilyn Stein, Guidelines for Community Supervision of DWI Offenders, 7 (2007) available at http://www.appa.net.org/eweb/docs/appa/pubs/DWI.pdf. Nationally, of the more than four million offenders placed on probation, fifteen percent had been sentenced for driving while impaired or intoxicated. Id. According to a Traffic Injury Research Foundation (TIRF) report, “Officers ... report that their average caseload consists of 112 offenders, including 55 for drunk driving offenses, [and] some officers ... reported caseloads of up to 1,300 offenders.” Id. at 9.

32 The average daily cost for managing an offender in the community is $3.42 per day. Pew Center on the States, One in 31: The Long Reach of American Corrections, 12 (2009) available at http://www.pewcenteronthestates.org/uploadedFiles/PSPP_1in31_report_FINAL_WEB_3-26-09.pdf. The average cost/year ($3.42/day x 26 months) times the number of drunk driving offenders sentenced to probation (600,000, or 15% of 4 million) = $1.6 billion (approximately).

33 “O]ver the past two decades, its growth as a share of state expenditures has been second only to Medicaid. State corrections costs now top $50 billion annually and consume one in every fifteen discretionary dollars.” Pew Center on the States, supra note 32, at 1.

34 Numerous celebrities, athletes, politicians, and the like have been arrested for drunk driving: Nicole Richie, Paris Hilton, Mel Gibson, Tracy Morgan, Mike Tyson, Khloe Kardashian, Kareem McKenzie (New York Giants), Keifer Sutherland, Heather Locklear, Lionel James (San Diego Chargers), Jim Leyritz (former New York Yankee), Jon Peters (producer), Jason Shirley (Cincinnati Bengals), Jerry Cash (former Quest CEO), Bob Solarisky (WEAR-TV news anchor), Mike Brasfield (Jefferson County, Washington sheriff), Lindsay Lohan, Joba Chamberlain (Yankees), Matthew McCoy (Tampa Bay Buccaneers), Lawyer Milloy (Atlanta Falcons), Elliott Rothman (Pomona City, California City Councilman), Brandon Marshall (Denver Broncos), Shia La Boeuf (actor), Bill Brennan (press secretary for Hawaii Mayor Mufi Hanneman), Eugene Maysky (Mayor of a Pennsylvania town), Cynthia Busch (wife of Maryland House Speaker), Mischa Barton, Bob Biggins (Illinois State Representative), Lofa Tatupu (Seattle
humiliating, and costly. Drunk driving convictions often leave the offender in financial ruin, over and above the fines and restitution an offender may be obligated to pay. If the offender’s driver’s license is not suspended, the cost of automobile insurance is staggering. If the conviction results in license suspension, the offender’s employment potential is unquestionably diminished. The increased criminalization of drunk driving laws has stigmatized many otherwise upstanding citizens with all the trappings of a criminal conviction. Their lost productivity is incalculable.

How Well is the Fix Working?

By the late 1990s, and well into this decade, at the state and national level, legislation upped the ante with increasingly harsher penalties for drunk driving offenses, particularly for repeat offenders. These efforts include provisions requiring AIID installation in offenders’ vehicles.

Seahawks), Jerry Stevens (Tampa Bay Buccaneers), Randy Scott (South Carolina State Senator), Carmelo Anthony (Denver Nuggets), Cedric Benson (Chicago Bears), Ron Menor (Hawaii State Senator), Judge Sheila McGinnis (Cook County, Chicago), Vito Fossella (New York Congressman), Nick Hogan (Hulk Hogan’s son), Richie Sambora (Bon Jovi), Randy Scott (Wisconsin State Senator), Chad Kroger (Nickleback), Tommy Roberston (Former Mississippi State Senator), Sidney Blumenthal (Clinton advisor), John Trebilcock (Oklahoma State Representative), Bobby Rodriguez (California Deputy Parole Commissioner), and the list continues. Total DUI, http://www.totaldui.com/news/celebrity-dui-spotlight/default.aspx (last visited Oct. 1, 2010).

According DUI.com, insurance-rate increases are the highest costs associated with DUIs. If the carrier does not “drop” the drunk driver’s policy, the provider will designate the policy as “high risk,” which can dramatically increase rates, sometimes as much as 400 percent. For example, Research for the Automobile Club of Southern California estimated that first-time offenders face a total cost of $12,116 as a result of a driving conviction. Of that total, $7,300 was attributed to increase in auto insurance. DUI.com, DUI Car – SR-22 Auto Insurance for DWI / DUI Drivers, http://www.dui.com/dui-car-insurance (last visited Oct. 1, 2010). Most state departments of motor vehicles (DMVs) require an offender to secure an SR-22 document which certifies high risk insurance coverage. (Delaware, Kentucky, Minnesota, New Mexico, New York, North Carolina, Oklahoma, and Pennsylvania are the only states which do not require SR-22). DMV Answers, Do All States Require a SR 22?, http://dmvanswers.com/questions/3918/Do-all-states-require-a-SR-22 (last visited Oct. 14). The insurance company must notify DMVs any time the policy is canceled, terminated, or lapses. SR-22 coverage is usually required for a period of three years or longer. For example, in Alaska, lifetime coverage is required for a fourth offense. ALASKA STAT. § 28.20.230 (2010).

Studies indicate that employers are reluctant to hire employees with criminal records. For example, sixty percent of employers surveyed indicated that they were not willing to consider hiring someone who has spent time in jail. In addition, a spell of incarceration can reduce earning potential by ten to thirty percent. Harry J. Holzer, Steven Raphael n& Michael A. Stoll, Employment Barriers Facing Ex-Offenders, The Urban Institute Reentry Roundtable Discussion Paper: Employment Barriers Facing Ex-Offenders, at 8-11 (2003). DUI offenders account for about nine percent of prison and jail populations. DOJ, Marsuchak, supra note 31, at 1.

AIIDs usually employ a handheld breath-testing device wired to a control unit under the dash. In order to start the car, the driver must provide a breath sample into the handheld device to determine whether the driver’s BAC is below a preset value. The breath-testing device measures the person’s breath alcohol concentration (BrAC) to determine the BAC level. Evidence shows that a person’s driving ability can be impaired with a BAC as low as .02 percent, but all data establishes that everyone’s driving ability is seriously impaired with a BAC of .10 percent. Consequently, all fifty states have set .08 as the BAC level necessary to sustain a drunk driving conviction.

Complete alcohol assessment and treatment programs, participate community service, and pay fines. Fines range from $100 to $1,000 for first offenses, $200 to $10,000 for second offenses, and $500 to $15,000 for third offenses. Massachusetts imposes harsher fines for fourth and fifth violations. Massachusetts considers all convictions obtained during the offender’s lifetime rather than obtained within a limited time period, like seven to ten years. These fines can range from $15,000 to $50,000. In addition, in these four states, jail time may be imposed for offenses, and licenses will be suspended. Connecticut permanently revokes an offender’s license after a third offense within ten years. Similarly, Massachusetts and Vermont permanently revokes an offender’s license after a fifth and third violation, respectively, obtained during the offender’s life. See generally, National Conference of State Legislatures, State IID Laws, http://www.ncsl.org/default.aspx?tabid=13558 (last visited Aug. 17, 2010).

38 Fulkerson, supra note 15, at 19.
41 Effects of BAC on the Body and Performance

<table>
<thead>
<tr>
<th>BAC</th>
<th>Effects on the Body</th>
</tr>
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<tbody>
<tr>
<td>0.1 - 0.5</td>
<td>Increase in heart and respiration rates</td>
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<tr>
<td></td>
<td>Decrease in various brain centre functions</td>
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<td></td>
<td>Inconsistent effects on behavioral task performances</td>
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<td></td>
<td>Decrease in judgment and inhibitions</td>
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<td></td>
<td>Mild sense of elation, relaxation, and pleasure</td>
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<tr>
<td>0.5 - 1.0</td>
<td>Physiological sedation of nearly all systems</td>
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<tr>
<td></td>
<td>Decreased attention and alertness, slowed reactions, impaired coordination, and reduced muscle strength</td>
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<tr>
<td></td>
<td>Reduced ability to make rational decisions or exercise good judgment</td>
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<tr>
<td></td>
<td>Increase in anxiety and depression</td>
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<tr>
<td></td>
<td>Decrease in patience</td>
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<tr>
<td>1.0 - 1.5</td>
<td>Dramatic slowing of reactions</td>
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<tr>
<td></td>
<td>Impairment of balance and movement</td>
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<td></td>
<td>Impairment of some visual functions</td>
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<tr>
<td></td>
<td>Slurred speech</td>
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<tr>
<td></td>
<td>Vomiting, especially if BAC is reached rapidly</td>
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<tr>
<td>1.6 - 2.9</td>
<td>Severe sensory impairment, including reduced awareness of external stimulation</td>
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<tr>
<td></td>
<td>Severe motor impairment, e.g. frequently staggering or falling</td>
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<tr>
<td>3.0 - 3.9</td>
<td>Non-responsive stupor</td>
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<tr>
<td></td>
<td>Loss of consciousness</td>
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<tr>
<td></td>
<td>Anesthesia comparable to that for surgery</td>
</tr>
<tr>
<td></td>
<td>Death (for many)</td>
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</table>
The vast majority of cases have upheld the BAC standard as an accurate measure of impairment. The same has been true for the breathalyzer test. As early as 1971, the reliability of breathalyzers was well accepted by courts.

Today, some courts even

\[ \geq 4.0 \]

Unconsciousness
Cessation of breathing
Death, usually due to respiratory failure


<table>
<thead>
<tr>
<th>BAC Table (for Men)</th>
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<tbody>
<tr>
<td><strong>Body Weight in Pounds</strong></td>
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<td>-----------------------</td>
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<td>0</td>
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<td>1</td>
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<td>10</td>
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</table>

Subtract .01% for each 40 minutes of drinking. 1 drink = 1.25 oz. 80 proof liquor, 12 oz. beer, or 5 oz. wine


See, e.g., State v. Lasworth 131 N.M. 739, 742, 42 P.3d 844, 847 (N.M. Ct. App. 2001) ("BAC provides an objective and reliable measure that states have recognized as presumptive and/or per se evidence of impairment, depending on the statute.") quoting J. Stuster & M. Burns, *Validation of the Standardized Field Sobriety Test Battery of BAC’s below 0.10 Percent, Final Report, Submitted to the U.S. Dept. of Transportation, NHTSA*, at 10 (1998).

See, e.g., People v. Donaldson, 36 A.D.2d 37, 39 -40 (N.Y. App. Div. 1971) (holding that the prosecution did not have to present expert testimony to establish the reliability of the breathalyzer test: “In approaching the question of the admissibility of the results of the chemical test we examine the history and experience of its use as well as its methodology and manner of operation. The Breathalyzer has been in public use since 1954 and has been widely accepted and adopted by law enforcement agencies for use in testing blood-alcohol content. It operates on the firmly established principle that at normal body temperature the concentration of alcohol in the blood circulating through the lungs is 2,100 times greater than in the air discharged from the lungs. The apparatus is a semi-automatic analyzer designed to test a blood-alcohol percentage present in any breath sample. Scientifically, the Breathalyzer wastes all but the last portion of a long exhalation, trapping a measured volume which is then forced through a reagent and is ultimately photometrically measured resulting in a calculated reading of the subject’s blood-alcohol percentage. Studies have shown that this device is considered to be ‘fail safe’ and that as a general rule its readings are slightly lower than those obtained in a corresponding blood test; and any slight error caused
excuse the prosecution from laying the foundation for the admissibility of the test because admissibility has been pre-determined by statute. Still, defendants challenge breathalyzers in many drunk driving cases. However, as long as the prosecutor can demonstrate that the machine measured up to standards, and the operator was qualified, either by mechanical defect or operator fault will usually produce lower rather than higher readings.”

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45 See, e.g., Regan v. State, 590 N.E.2d 640, 645 (Ind. Ct. App. 1992) (holding that the rebuttable presumption for the reliability of a properly administered breathalyzer test created by Indiana state law did not violate the defendant’s constitutional rights); State v. Vega, 465 N.E.2d 1303, 1305 (Ohio 1984) (holding that “an accused is not denied his constitutional right to present a defense nor is the state relieved of its burden of proving guilt beyond a reasonable doubt where a trial judge does not permit expert testimony to attack the reliability of intoxilyzers in general”); McGough v. Slaughter, 395 So.2d 972, 975 (Ala. 1981) (“The legislature has by statute remedied many of the problems involved in laying a foundation for admission of intoxication test results . . . . A party offering results from tests shown to be given in conformity with the statute is relieved of the burden of laying the extensive predicate generally necessary for admission of scientific test results.”); see Leonard R. Stamm, Part One: Essential Cases to Know in Handling Challenges to Scientific Evidence, 27-AUG CHAMP 48, 50 (2003).

46 See PATRICK T. BARONE, DEFENDING DRINKING DRIVERS §§ 200-260 (2d ed. 2010).

47 Breathalyzers machines which are used by police require NHTSA approval. NHTSA has approved the following manufacturers and breathalyzer devices for law enforcement use:

1. Alcohol Countermeasure Systems Corp.: Alert J3AD, Alert J4X.ec, and PBA3000C
2. BAC Systems, Inc.: Breath Analysis Computer
3. CAMEC, Ltd.: IR Breath Analyzer
4. CMI, Inc.: Intoxilizer Model (26 variations)
5. Draeger Safety, Inc.: Alcotest Model (8 variations), Breathalyzer Model (5 variations)
6. Gall’s Inc.: Alcohol Detection System – A.D.S. 500
7. Guth Laboratories, Inc.: Alcotector BAC-100, Alcotector C2H5OH
10. Lifeloc Technologies, Inc.: PBA 3000B, PBA 3000-P, PBA 3000C, Alcohol Data Sensor, Phoenix, EV 30, FC 10, FC 20
11. Lion Laboratories, Ltd.: Alcometer Model (4 variations), Intoxilizer Model (5 variations)
12. Luckey Laboratories: Alco-Analyzer Model (2 variations)
13. National Draeger, Inc.: Alcotest Model (6 variations), Breathalyzer Model (5 variations)
15. Omicron Systems: Intoxilizer Model (2 variations)
16. Plus 4 Engineering: 5000 Plus4
17. Seres: Alco Master, Alcopro
18. Siemans-Allis: Alcomat, Alcomat F
20. Sound-Off, Inc.: AlcoData, Seres Alco Master, Seres Alcopro
21. Stephenson Corp.: Breathalyzer 900
23. Verax Systems, Inc.: BAC Verifier, BAC Verifier Datamaster, BAC Verifier Datamaster II

challenges are generally unsuccessful. In addition, in *Schmerber v. California*, the United States Supreme Court rejected Fifth Amendment challenges against self-incrimination for to the admissibility of intoxication tests. The Supreme Court also held that the tests do not violate the Fourth Amendment for being unreasonable searches or seizures.

Beyond the use of breath-testing devices to determine intoxication levels during a traffic stop or arrest, requiring offenders to install AIIDs on their vehicles to prevent further drunk driving has also been available since the 1970s. Earlier alcohol sensing technology proved unreliable or inaccurate; however, current technology using an

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48 Prosecutors only need to produce evidence showing that (1) the test was performed according the state guidelines, (2) that the operator was properly certified, (3) the test was approved by prevailing law, (4) the machine was tested regularly for accuracy and was in properly working condition when the test was performed, (5) the motorist had been observed for a proscribed amount of time, and during this time the alleged offender did not smoke, vomit, or consume any other alcoholic beverages, (6) proper operation procedures were followed, and (7) the results of the test were properly processed. See, e.g., State v. Sensing, 843 S.W.2d 412, 416 (Tenn. 1992); Moore v. State, 442 So.2d 164, 167 (Ala. Cr. App. 1983) (The court held that the intoxication test was inadmissible because “[t]he test was not shown to be performed in conformity with the requirements of the statute.” In addition, among other things, the prosecution failed to establish that “the intoximeter test was administered by a qualified individual who could properly conduct the test and interpret the results” and that “the instrument used in conducting the test was in good working condition and the test was conducted in such a manner as to secure accurate results.”). However, noncompliance with statute standards may only address the weight of the intoxication test, rather than rendering it inadmissible. See, e.g., People v. Adams, 131 Cal.Rptr. 190, 195 (Cal. Ct. App. 1976) (“[N]oncompliance goes merely to the weight of the evidence. The regulations are an expressed standard for competency of the test results; in effect, they are a simplified method of admitting the results into evidence. Were the rule to provide that the evidence of the test results would be inadmissible if the regulation were not followed there would be the incentive to turn the drunk driving case into a contest to find a technical defect in the test procedure so as to have the evidence excluded. Under the present rule, if the test procedure does not comply with the regulations, a defendant is protected, as the prosecution then must qualify the personnel involved in the test, the accuracy of the equipment used and the reliability of the method followed before the results can be admitted. In the present case, as the regulations were not followed, appellants were entitled to attempt to discredit the results by showing that noncompliance affected their validity; indeed, the court instructed that any such noncompliance could be considered by the jury in evaluating the test evidence.”)

49 384 U.S. 757, 760-61 (1966) (The Court held that the removal of a blood sample from the defendant by a physician over the defendant’s objection did constitute compulsion. However, the objected removal of blood did not violate the Fifth Amendment because it did not amount to testimony against himself: “We hold that the privilege protects an accused only from being compelled to testify against himself, or otherwise provide the State with evidence of testimonial or communicative nature, and that the withdrawal of blood and use of the analysis in question in this case did not involve compulsion to these ends.”)

50 Id. at 770-71. (Absent an emergency, search warrants would typically be required for intrusions into the body. However, threatened “destruction of evidence” gives rise to an emergency situation in the case of drunk driving. The Court reasoned that because “the percentage of alcohol in the blood begins to diminish shortly after drinking stops,” law enforcement need not secure a warrant before attempting to acquire evidence of the accused’s BAC.)

51 Fulkerson, supra note 15, at 19.

52 Older devices detect alcohol using the semiconductor sensing method. For semiconductor sensing, when alcohol is present in the breath, the electrical conductivity increases proportionally to the alcohol
An electrochemical sensor (also called fuel-cell sensor) has proven to be much more dependable.\textsuperscript{53} AIIDs now prevent driver circumvention,\textsuperscript{54} and have reduced costs.\textsuperscript{55} As one author points out, “[M]any practitioners believe that AIIDs are expensive and not affordable for many offenders when in fact these devices only cost about $3-4 (USD) per day or about the cost of a drink.”\textsuperscript{56} To be sure, on an annual basis, AIID operating costs add up to a considerable amount. Compared with the cost of high risk automobile insurance,\textsuperscript{57} however, the costs are negligible.

\begin{footnotesize}
\textsuperscript{53} The electrochemical method detects alcohol by converting alcohol and oxygen into an electrical current in order to measure the individual’s BAC. The electrochemical method requires less calibration than earlier versions and is alcohol specific. These two factors significantly reduce the risk of false positives, which causes the device to prohibit a sober person from starting the vehicle. \textit{Id.}

\textsuperscript{54} Circumvention refers to “any attempt to disable, disconnect or bypass the interlock to allow the intended driver to start the vehicle without providing a natural, unfiltered breath sample.” \textit{Id.} at 10. Earlier AIIDs were easy to circumvent. A study from 1990 revealed that almost half of the installed AIIDs had been bypassed at some point. \textit{Id.} at 21. \textit{See infra} notes 78-80 and accompanying text.

\textsuperscript{55} Beirness (2000), \textit{supra} note 52, at 26. Generally, the offender must pay for the installation of an AIID, which runs between $100 and $250, and then pay monthly costs (including installation insurance and basic fees) between $65 and $90. Cost variations can be attributed to factors such as program size (economies can often be achieved with larger scale programs), geographic areas to be covered or even competition between vendors. Many States have taken steps to address concerns that the cost of interlock sanctions acts as a barrier to offender implementation. About twenty States have devised ways to offset costs for indigent offenders. Interlock indigent funds operate in many States. Some set up with fees from other offenders; other States provide funds through arrangements with interlock providers. A few States impose additional monitoring fees on offenders to offset increased administrative costs, while some experts suggest using revenues from alcohol taxes or insurance surcharges to fund interlock programs. “Research estimates of interlock benefit/cost suggest a $3 benefit for first-time offenders and a $4 to $7 benefit for other offenders accruing for each dollar of program cost.” DOT HS 811 246, \textit{supra} note 21, at 3 (citations omitted).


\textsuperscript{57} \textit{See supra} note 35 and accompanying text.
\end{footnotesize}
Federal legislation primarily fueled the eagerness to improve breath-testing devices. In 1998, Congress enacted the Transportation Equity Act for the 21st Century (TEA-21). Under § 164 of the Act, a state may elect to either transfer 1.5 percent of its highway construction funds to highway safety programs or to enact a federally approved repeat intoxicated driver law. Initially, in order to comply with § 164, the repeat offender program must require, among other things, that the driver’s vehicles be impounded, immobilized, or have an AIID installed after the one-year license suspension.

Before the enactment of TEA-21, only twelve states required AIID installation after completion of license suspension for repeat DUI offenders. Today, twenty-six states mandate installation for certain offenders. A total of forty-eight states have legislation allowing for AIIDs for certain offenders, while two states (Alabama and South Dakota) have no AIID laws at all.

60 § 164 also required a minimum one year license suspension, periodic assessment of the offender’s alcohol intake, treatment for alcohol abuse and mandatory community service. Congress has recently revised TEA-21 to require either one year of hard license’s suspension or a combination of hard license suspension for forty-five days followed reinstatement of limited driving privileges for specific purposes as long as an AIID is installed on the offender’s vehicle. § 164.
61 Neugebauer, supra note 40, at 4.
63 Id. The following chart appears on MADD’s website:

<table>
<thead>
<tr>
<th>Status of State IID Laws</th>
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<tr>
<td><strong>Mandatory .08 Conviction</strong></td>
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<td>Alaska</td>
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<td>Arizona</td>
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<td>Arkansas</td>
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<td>California Pilot Program**</td>
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<td>Washington</td>
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*Until recently, Vermont had no interlock laws. However, approved May 27, 2010, state legislation now provides for discretionary use of interlock devices upon conviction. VT STAT ANN tit 23 § 1206 (2010), amended by 2010 no. 126 Vt. Legis. Serv.
**Interlocks are highly incentivized in that, if the offender chooses not to use the device, he or she has a year-long license suspension and any violation is a felony.
***California’s pilot program covers the counties of Los Angeles, Alameda, Sacramento, and Tulare. These counties combined have a population of over 14 million. Id.
In addition to legislative incentives for states to adopt AIID requirements, research has peaked new interest since the turn of the twenty-first century. The Canadian-based Traffic Injury Research Foundation (TIRF) is a key organization involved in this research. The focus has been on reducing recidivism. Studies indicate that AIIDs reduce recidivism when the device is on the vehicle. However, successful reduction in the rate of recidivism only persists while the device is installed on the vehicle: “[T] here is no residual effect in preventing impaired driving after the device is removed from the vehicle.” Consequently, recommendations have focused on expanding AIID use to reduce recidivism by including first-time offenders, or by offering AIIDs as a diversion from the criminal justice system.


65 E.g., in 2008, the Swedish Road Administration (SRA) and the Swedish Abstaining Motorists Association (MHF) hosted the ninth Annual International Interlock Symposium in Tallberg, Sweden. Under the theme “Planning for Success,” the symposium discussed program features necessary for program acceptance and success. Presentations were developed “to assist jurisdictions that have implemented, that are implementing or that are considering implementing alcohol interlocks ‘to plan for success’ by sharing with them how to build and develop the essential ingredients of a successful interlock strategy.” Robertson & Vanlaar (2008), supra note 56, at 3.

66 According to fifteen different studies, the reduction of the rate of recidivism varies between thirty-five to seventy-five percent. DOT HS 811 262, supra note 30, at 9; see also Dewey-Kollen & Downes, supra note 20, at 16 (“Specific findings include: a seventy-seven percent decrease in recidivism among interlocked first offenders in West Virginia, an eighty percent reduction in recidivism among interlock Quebec, and a ninety-five percent reduction in recidivism among interlocked first offenders in Alberta.” Citations omitted.); see also International Council on Alcohol, Drugs, and Traffic Safety (ICADTS), AIIDs Position Paper, 11 (2001), available at http://www.icadts.org/reports/AlcoholInterlockReport.pdf (ICADTS looks at eight different studies, comparing recidivism during and after the interlock program); see also Beirness (2000), supra note 52, at 16-17 (Nine studies conducted in the 1990s are summarized.).

67 Beirness (2000), supra note 52, at 17.

68 Pre-conviction diversion programs allow judges to dismiss drunk driving charges after the offender has completed the program requirements. Many pre-conviction diversion programs include a combination of educational classes with the use of interlock devices. If an offender receives a subsequent drunk driving
Outside the criminal justice system, several countries have tested and implemented mandatory AIID installation for commercial and public transport vehicles. In 2004, the Swedish Road Administration (SRA) required all trucks weighing over seven tons be equipped with AIIDs.

In the United States, AIIDs have not made their way onto commercial vehicles or public transport. Breathalyzers have become available for purchase in the consumer market, however. But, AIID usage is required only in connection with a sentencing (or diverting) a drunk driver within the criminal justice system. As a sentencing tool, AIIDs could make a much greater difference than they do.

Despite statutory mandates, however, judges rarely order it. History proves that a mere mandate will not successfully implement a program. Only ten to twenty-five percent of eligible offenders are required to install devices as a condition of their punishment. In 2008, with nearly 1.5 million arrests, the number of installed AIIDs was estimated to be charge, he or she is treated as a first-time offender. Initiatives to Address Drunk Driving, supra note 14, at 26.

69 Robertson & Vanlaar (2008), supra note 56, at 54.
70 Id. In 2006, the SRA reduced the weight to 3.5 tons.


72 Beirness & Robertson (2003), supra note 64, at 10. During the 1990’s, Washington legislatures required judges to order AIIDs when the offender’s BAC was 0.15 percent or greater. Rather than seeing an increase in the number of AIIDs, the number of plea bargains and charge reductions for DUI offenders increased. Beirness & Robertson (2004), supra note 56, at 32. Similarly, a California studied revealed that judges do not necessarily believe that AIIDs reduce recidivism despite evidence to the contrary. Beirness & Robertson (2003), supra note 64, at 26. Other studies indicate that “[m]any judges perceived the [AIID] requirement as a moneymaker for the interlock providers and not a reliable method of reducing recidivism.” Beirness & Robertson (2004), supra note 56, at 32.


74 Id.
about 146,000.75 Even when a court orders a convicted offender to install an AIID, the order is often ignored.76

Judges and lawyers are reluctant to require AIID installation in sentencing offenders because, in part, they share outdated views about the technology.77 Two of the most prominent misconceptions concern the participant’s ability to circumvent the system and the rate of false positives. Neither concern is particularly relevant given today’s technological progress.

Current AIIDs limit a driver’s attempts to circumvent the device by employing three technologies: (1) rolling retests, which require the driver periodically to give breath samples after the vehicle has been started;78 (2) electronic data recording, which registers any attempts to disconnect or otherwise tamper with the AIID;79 and (3) driver-recognition systems, which prohibit anyone but the driver from providing a sample.80 False positives, if they occur, mean that the device incorrectly precludes a legally sober driver from starting the vehicle.81 Current electrochemical sensors, however, eliminate

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76 One study indicated that twenty-five percent of offenders ordered to have an AIID installed never do even though failure to do so is a violation of the offender’s probation. Beirness (2000), supra note 52, at 20.

77 Dewey-Kollen & Downes, supra note 20, at 18. “[T]heir knowledge is contaminated by the ‘myths’ that plague interlock programs. This is particularly true of older, more established programs (e.g., CA) because many of these professionals have first-hand experience with the difficulties experienced by some of the earlier interlock programs.” Beirness & Roberson (2003), supra note 64, at 40.

78 Id. at 11. Rolling retests which to prevent a sober person from providing a sample for an alcohol-impaired driver, and to detect drivers whose BAC increases after they start the car because they have continuing to drink while driving. Failure to provide a breath sample or a breath sample that registers above the threshold value does not stop the engine to avoid creating unsafe traffic conditions. Rather, a retest violation triggers an alarm that can result in flashing lights, continuous horn beeping, or an internal alarm. Hopefully, these measures will prompt the driver to stop the vehicle. In addition to a visual or auditory alarm, the retest violation will also be recorded on the data logger. Beirness (2000), supra note 52, at 11.

79 Data loggers record date and time of all successful and unsuccessful attempts to start the vehicle, including all breath sample results. They provide information like the number of times the participant tried to start the car while intoxicated. Id. at 10.

80 Driver-recognition systems require the driver to hum, or reproduce a specific breath-pulse code while providing a breath sample. They are designed to be difficult for first-time users, so they prevent sober bystanders from providing a breath sample for an alcohol-impaired participant. Id. at 11. They prevent the participant from trying to simulate breath samples by storing samples in balloons or using air compressors. Jay M. Zitter, Validity, Construction, and Application of IID Laws, 15 A.L.R. 6th 375, ¶2 (2006).

81 False positives “diminish confidence in the system and may increase the probability of users attempting to circumvent the system or driving another vehicle not equipped with an [AIID].” For earlier systems, false positives were the most commonly reported problem. The testing devices often responded to nonalcoholic substances. Beirness, (2000), supra note 52, at 14.
the possibility of the device detecting anything but alcohol. The technology is not the culprit.

Flaws in program designs also contribute to underutilization. Although TEA-21 sought to impose AIID programs, it provided little direction. Many offenders are AIID-ineligible until it is too late. For example, TEA-21 mandates a period of “hard” license suspension, where offenders totally lose all driving privileges and cannot participate in any monitored driving programs, including an AIID program. Evidence indicates, however, that the sooner an offender enters an AIID program, the less likely recidivism will occur. Moreover, license suspension doesn’t keep offenders off the road: fifty to seventy-five percent of offenders whose licenses are suspended continue to drive anyway.

In addition, many first-time offenders are AIID-ineligible. One author notes that drunk driving laws have been more lenient on first time offenders: “offenders simply had “a

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82 Today, most false positives result when unmetabolized alcohol is present in the body although the individual has not consumed any alcohol for many hours. Typically, the presence of unmetabolized alcohol can be attributed to excessive drinking the previous night. In other words, a driver wakes up drunk and is still too impaired to drive. Id. at 22.

83 The legislation was described as “ambiguous, making it difficult to interpret,” “too complicated,” or “convoluted.” Beirness & Robertson (2003), supra note 64, at 40. In 1992, NHTSA did issue program guidelines called Model Specifications for Breath and Alcohol IIDs (BAIIDs) for states, but these recommendations were designed to allow flexibility for states to design their own programs. Model Specifications for BAIIDs, 57 Fed. Reg. 11772-11787 (Apr. 7, 1992); see also ICADTS, supra note 66, at 9. Primarily, recommendations set minimum requirements for AIIDs to prevent false positives (i.e., an AIID must allow an individual with a very low or zero BAC to operate the vehicle), and advised states to require data recording systems and running retests to prevent circumvention. Model Specifications for BAIIDs, 57 Fed. Reg. at 11775; see also Beirness, (2000), supra note 52, at 13. In addition, NHTSA recommended mandatory re-calibration to allow the supervising authority to review the data recorder. However, NHTSA provided no means of certification for properly functioning equipment. Many proponents of AIIDs criticize the program for having no central agency or certified laboratories to evaluate the equipment. Model Specifications for BAIIDs, 57 Fed. Reg. at 11776; see also Beirness, (2000), supra note 52, at 13.

84 Congress has amended the Act to allow for a forty-five day period of hard license suspension followed by limited license re-instatement when an AIID is installed. 23 U.S.C.A. § 164 (West 2008). This amendment has most likely contributed to the increase of AIIDs. Still, any offense, whether alcohol-related or not, committed by DUI offenders during hard suspension time can preclude participation when they would have otherwise become eligible. One study indicates that these “ineligible offenders had the highest re-offense rate during the period of time that the [AIID] would have been installed in their vehicles had they been accepted into the program. These high-risk offenders are most in need of the control provided by the [AIID] program to prevent repeated DUI occurrences, yet they are the very ones systematically excluded from participation.” Beirness (2000), supra note 52, at 29.

85 Many proponents of AIIDs advocate for a reduction in hard license suspension: “If the offender has already served a lengthy period of hard suspension and has experienced the ease, convenience, and low risk of detection for driving while suspended, the ‘benefits’ of participating in an [AIID] program may pale in comparison.” Beirness (2000), supra note 52, at 26.

86 Dewey-Kollen & Downes, supra note 20, at 15. For drunk drivers involved in fatal crashes, between 22-34% were driving without a valid license at the time of the accident. DOJ, Alcohol and Crime, supra note 8, at 19. License restoration may still be even an insufficient incentive to encourage participation in AIID programs. A study conducted in California indicated that “only 16.4 percent of repeat offenders applied for license reinstatement within three years of having become eligible.” Beirness (2000), supra note 52, at 26-27.
little too much to drink’” and they will “learn from their mistakes.” However, evidence contradicts these notions. In over ninety percent of alcohol-related fatal crashes, the alcohol-impaired driver has not been convicted of a drunk driving offense during the previous three years, indicating that he or she would be considered a first-time offender. Studies also demonstrate that most first-time offenders have BAC levels twice the legal limit, increasing the likelihood of an accident. First-time offenders are just as likely to have issues with alcohol as repeat offenders. In a clinical evaluation, researchers concluded that eighty percent of the group made up of first-time offenders had problems with alcohol abuse. Only eighteen percent were considered social drinkers.

To be sure, there has been a push for tougher laws for first-time offenders. Recently, NHTSA formed a panel to create more guidelines for state programs. The panel issued a report in May 2010. Overall, the panel recommended early program entry, harsher penalties for noncompliance, standardization of reporting and information flow, and alcohol-treatment incorporation.

In November of 2006, MADD launched its “Campaign to Eliminate Drunk Driving,” which called for mandating AIIDs for all offenders. Similar recommendations have

87 Dewey-Kollen & Downes, supra note 20, at 14.
88 Id.
89 Ferguson et al., supra note 39, at 4.
90 Dewey-Kollen & Downes, supra note 20, at 15.
91 Id.
92 Studies also show that seventy to eighty percent of all offenders abuse alcohol. Id.
93 DOT HS 811 262, supra note 30. Because NHTSA’s 1992 guidelines addressed technical standards, like circumvention protocols and threshold BAC levels for lockout, the recent panel focused on “how those devices should be used in the interest of safety.” Id. at 19.
94 Id. at 15-17. Currently, states take varying approaches to ensuring that a DUI offender complies with an AIID order. For example, in eight states, the Department of Motor Vehicles administers the program; in eight states, courts administer the program; in two states, probation departments administer the program; and in seventeen states multiple agencies administer the program. Beirness & Robertson (2003), supra note 64, at 22. Even with the new NHTSA recommendations, they are only guidelines. What this all means is that when a judge orders the convicted (or diverted) offender to install an AIID, there is rarely enough accountability in the judicial system to make sure that happens. State agencies involved with AIID programs must have a reporting system. Id. at 42. Many convicted (or diverted) drunk driver have access to a vehicle that is not equipped with an AIID. Even when offenders are ordered to have AIIDs installed, they don’t. This goes undetected due to a lack of communication between program administrators and courts. Beirness (2000), supra note 52, at 23. Monitoring is the only way to ensure compliance. In addition, monitoring also ensures that the AIID is functioning properly and has not been circumvented. Id. at 40-41.
95 Mothers Against Drunk Driving – Campaign to Eliminate Drunk Driving, http://www.madd.org/Drunk-Driving/Drunk-Driving/Campaign-to-Eliminate-Drunk-Driving.aspx (last visited June 2, 2010). Campaign efforts seek to eliminate drunk driving permanently by concentrating on four issues: (1) mandating AIIDs for all offenders; (2) expand law enforcement efforts by implementing more sobriety checkpoints and saturation patrols; (3) advance vehicle technology to make it impossible for a drunk person to circumvent; and (4) increase public support and awareness.
been urged by the Center for Disease Control,96 the nonprofit organization Don’t Die Drunk,97 and The Century Council.98

In 2005, New Mexico became the first state to pass legislation mandating an AIID program for first-time offenders.99 Among other states, Arizona, Illinois, and Louisiana now also require AIIDs for all offenders, including first-time offenders.100 New Mexico’s effort to eliminate drunk driving, however, is worth a closer examination.101

At one time, New Mexico had one of the country’s highest rates of alcohol-related crashes, prompting New Mexico legislatures to address the issue.102 As a result, New Mexico has developed one of the most comprehensive programs to reduce drunk driving. In fact, Governor Bill Richardson boasts that New Mexico has gone from having some of the worst problems with alcohol-impaired driving to being a forerunner in fighting alcohol-impaired driving.103

With fifty percent of offenders installing AIIDs, New Mexico has developed one of the most successful AIID programs in the country.104 With a total of 8,625 AIIDs installed in 2009, per capita, New Mexico far surpasses any other state in total number of devices installed.105 Mandatory AIID installation for all offenders is one reason New Mexico’s participation rates are higher than other states. New Mexico was the first state to require

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99 N.M STAT. ANN. § 66-8-102(N) (West 2010); see also Dewey-Kollen & Downes, supra note 20, at 14.
101 Many have commended New Mexico’s progress. A panel created to issue a report to NHTSA to develop recommendations for state AIID programs repeatedly cited New Mexico’s program as a model for other states. DOT HS 811 262, supra note 30. And Chuck Hurley, retired chief executive of Mothers Against Drunk Driving (MADD), stated that MADD wanted all fifty states to follow New Mexico’s lead. Kate Linthicum, New Mexico Turns a Corner on Drunk Driving, L.A. Times, July 7, 2009, available at http://articles.latimes.com/2009/jul/07/nation/na-new-mexico-dwi7.
102 Id.
104 DOT HS 811 262, supra note 30, at 22.
105 Roth, supra note 75, at 2.
AIIDs for all offenders. New Mexico laws encourage prompt program participation, rather than hard license suspension. A first offender must participate in the program for one year, two years for a second offender, three years for a third offender, and for offenders with four or more previous DUI convictions, lifetime participation with review after five years.

New Mexico’s efforts have resulted in a thirty-five percent decrease in the number of alcohol-related deaths since 2002. In addition, since 2002, there are about thirty percent fewer crashes involving alcohol, and consequently, fewer injuries resulting from these crashes. Increased AIID use has definitely contributed to the reduction of alcohol-related crashes. As Governor Richardson put it: “Our solutions are working. We have changed the culture in New Mexico. No one thought it was possible, but it has happened.”

Still, the easiest way to bypass an AIID is to drive an unequipped car. Consequently, some states have devised ways for law enforcement to detect when a program participant drives a vehicle not equipped with an AIIDs. For example, Maryland denotes the license restriction on the front of the offender’s driver’s license in red ink. Recently, some states have been incorporating license restrictions into data recovered from “automatic tag readers.” Automatic tag readers allow law enforcement to scan the license plate of a moving or stationary car to determine if the vehicle owner has a suspended driver’s license.

Clearly, AIIDs have gained a foothold in the criminal justice system’s response to a drunk driving arrest. Nonetheless, while progress has been made toward keeping convicted (or diverted) drunk drivers off the roads because AIIDs keeps their cars from starting, the focus has been limited to identified offenders for a limited period of time.

107 Id.
108 Id.
110 Id.
111 Beirness & Robertson (2003), supra note 64, at 11
114 Beirness and Vanlaar (2008), supra note 56, at 14.
Once the AIID comes off the car, all bets are off. AIIDs do not prevent recidivism. They do not, standing alone, treat alcohol abuse problems. If AIIDs help offenders change their lifestyle, it is only when they are part of a comprehensive treatment program. The cost of a probation term that includes an AIID order - even without a stay in a local jail or prison – is all but wasted if recidivism is not prevented. Unless an offender is slapped with an AIID order for the rest of his or her life, and the offender complies with that order, nothing in the current approach will keep offenders off the roads. Offenders will drive with suspended licenses; offenders will drive unequipped cars; offenders will ignore an AIID order, escape detection, and keep right on down the road.

Moreover, the exclusive focus for requiring AIIDs on identified offenders is too narrow. What about all the rest of us? Most of us drive without having consumed any alcohol. But, a good number of us leave a party, a restaurant, or a picnic having had “one too many” and manage to arrive safely home without getting stopped. We are not deterred by the threat of getting stopped on the way home. Nevermind that we, too, might flunk a breathalyzer test. If we think about it at all, we take a minute to thank our lucky stars. Or, we congratulate ourselves on being accurate judges of our sobriety. Research shows, however, that our self-assessment is frequently off – we are more drunk than we know. Still, many know they’ve had too much, but still drive “safe” in the

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115 Researchers examined fourteen studies in the U.S. and Canada evaluating the effects of AIID programs on drunk-driving recidivism. The bottom line: AIID programs reduce drunk-driving recidivism, but only while the devices are attached. CDC – Motor Vehicle Safety: Impaired Driving, http://www.cdc.gov/motorvehiclesafety/impaired_driving/impaired_drv_factsheet.html (last visited Aug. 23, 2010).
116 Beirness & Robertson (2003), supra note 64, at 1.
117 For example, in New Mexico, it is estimated that each DUI costs the state $50,000. However, studies indicate that an effective AIID program can offset the cost by a $5-to-$1 benefit-to-cost ratio. The cost is passed to the offender, saving the state money. DOT HS 811 262, supra note 30, at 26.
118 From 1990 to 2006, the number of licensed drivers grew from 167 million to 202 million. From 1980 to 1990, total miles vehicle miles traveled (VMT) increased from 1.5 to 2.1 billion, or approximately forty percent. Between 1990 and 2000, this figure increased an additional twenty-eight percent. By 2005, total highway VMT had increased to three billion. This means that VMT doubled in the twenty-five years between 1980 and 2005. U.S. Department of Transportation, National Highway Transportation, DOT HS 811 040, Technology Application for Safety Programs: A Primer, 2 (Sept. 2008), available at http://www.nhtsa.gov/DOT/NHTSA/Traffic%20Injury%20Control/Articles/Associated%20Files/811040.pdf [hereinafter DOT HS 811 040].
120 In a recent study in England, more than forty percent of individuals with BAC at .08 or above self-assessed themselves as not being drunk. More than seventy-nine percent of those who regarded themselves as drunk intended to consume more alcohol before returning home. Mark A. Bellis, Karen Hughes, Zara Quigg, Michela Morleo, & Paulo Lisboa, Cross-sectional Measured and Modelled Estimates of Blood Alcohol Levels in UK Nightlife and Their Relationship with Drinking Behaviours and Observed Sings of Inebriation, SUBSTANCE ABUSE TREATMENT, PREVENTION, AND POLICY, Apr. 20, 2010, available at http://www.substanceabusepolicy.com/content/5/1/5. See also, Maria Teresa Munoz Sastre, Etienne
knowledge that there could simply never be enough police officers in enough places to haul every drunk driver off the streets. If we are serious about removing drunk drivers from the road, and technology provides prevention, employing it solely within the criminal justice system means that only unlucky drunk drivers will be stopped. Unlucky, of course, only in the sense that we all feel that we’ve been lucky if we don’t get caught doing something wrong or dangerous. The goal should be to keep anyone from ever being able to “roll the dice” and drive drunk, undetected or not.

Indeed, many organizations have initiated research to improve the technology of AIIDs with the long-term goal of incorporating devices into all vehicles. They recognize that AIIDs must function accurately and efficiently before AIIDs can even be a consideration for non-offenders. The movement to use technology to prevent drunk driving is well underway.

Progress Toward a Permanent Fix

In 2004, New Mexico, New York, and Oklahoma considered legislation mandating that all new vehicles be equipped with AIIDs. New Mexico established a Governor’s Task Force to address broader AIID implementation.

In 2008, NHTSA entered into a five-year cooperative agreement with the Automotive Coalition for Traffic Safety (ACTS) to develop universal AIIDs. The coalition, entitled Driver Alcohol Detection System for Safety (DADSS), is conducting comprehensive research regarding universal alcohol AIIDs. The goal, by the end of the five-year agreement, is to present “the practical demonstration of an alcohol detection subsystem, suitable for subsequent installation in a vehicle.” The initial funding for this effort exceeds $10 million.

DADSS wisely recognizes that, to be suitable for general public use, “alcohol detection must be far less intrusive – they must not impede sober drivers from starting their

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121 Beirness & Robertson (2004), supra note 56, at 17.
122 Ferguson et al., supra note 39, at 4.
123 Id.
124 ACTS is a private organization formed by vehicle manufacturers to address safety concerns. It is primarily funded by BMW, Chrysler, Ford, General Motors, Jaguar, Land Rover, Mazda, Mercedes Benz, Mitsubishi, Nissan, Porsche, Toyota, and Volkswagen. Id. at 5.
125 DADSS’s primary goal is to “explore the feasibility, potential benefits of, and the public policy changes associated with a more widespread use of in-vehicle technology to prevent alcohol-impaired driving.” Id. at 1.
126 Id.
127 “The Automotive Coalition for Traffic Safety (ACTS) and the National Highway Traffic Safety Administration are engaged in a cooperative research agreement. Costs of the five-year, $10 million agreement will be shared by both organizations.” Driver Alcohol Detection System for Safety, Why Are We Here? Alcohol Detection, http://www.dadss.org/ (last visited Sept. 19, 2010)
vehicles.” Admittedly, this is no small goal. We drivers are a touchy, impatient bunch. The idea of having to blow air into a handheld recording device is offensive in its own right. Actually, we don’t want to have to touch anything besides the steering wheel and, where necessary, the keyless ignition button. We don’t want to have to do anything once we get in the car, but turn the key and put the pedal to the metal. And, if we’re sober enough, our cars better start, or there’ll be hell to pay!

Yes, for the most part, we have finally been willing to buckle up. Grudgingly. But, we’re insulted at the notion that we should have “to prove” we are sober in order to get on with our lives. To be questioned at this point of personal assessment strikes at some fundamental notions about our right to exercise self-control and, even more deeply, our desire to feel we are in control of our lives and our destiny. And, let’s be honest – most social drinkers enjoy the feeling of legal intoxication. We do not believe that our competence to make judgments is adversely affected by an evening’s merriment. We believe we have the right to be left alone to judge when enough is enough. If we have had a few drinks at dinner, our private, individual judgment about our sobriety should be respected. Ideally, drivers should not have to do anything beyond being in the driver’s seat, breathing normally. And then, we don’t want to have to wait too long for the engine to start. Oh, and we don’t want a passenger’s boozy exhalations to trip us up. What a blow to the Designated Driver Program if that were to happen!

Fortunately, DADSS’s specifications anticipate and respond to these inchoate arguments. The alcohol detection systems under development must disable a vehicle only if the driver’s BAC exceeds .08. Further, the system must detect the driver’s BAC within .325 to .4 seconds from the time the driver enters the vehicle and closes the door. Additionally, the system must differentiate BAC from other non-intoxicating substances which might contain alcohol. For many folks, the issue of personal control over the

128 “They would need to be capable of rapidly and accurately determining and measuring alcohol in the blood. They would also need to be small, reliable, durable, repeatable, maintenance free, and relatively inexpensive.” Id.

129 See infra notes 170-184 and accompanying text.


131 See supra note 14 and accompanying text for a history of the Designated Driver Program.

132 The Performance Specifications issued by DADSS identify its mission or theme: “The DADSS Subsystem provides information to the Vehicle Decision Module to deter operation of motor vehicles by drivers who are at or above 0.08 Blood Alcohol Content (BAC).” Driver Alcohol Detection System for Safety, Draft Subsystem Performance Specification, Document No. DADSS001-DRAFT07, 1 (2008), available at http://www.dadss.org/sites/default/files/dadss001-draft_100908.pdf [hereinafter DADSS Performance Specifications]. This conforms with the European Standard " EN 50436-2:2007, Alcohol interlocks - Test methods and performance requirements - Part 2: Instruments having a mouthpiece and measuring breath alcohol for general preventive use". See id. at 15. In addition, the specifications require that the range of error for BAC at .07-.09 BAC be no greater than .0003 standard deviations. Id. at 8.

133 Id. at 4.

134 E.g., perfume, after shave, tobacco, antibacterial soap, lotion, hand cleaner, suntan lotion, vehicle fuel, paint, grease, dirt/soil, food. Id. at 16-20.
decision to drive drunk is alleviated because the technology will not allow for a false positive.

The technologies under development — distant spectrometry and electrochemical spectrometry — use sophisticated air and tissue sensors that are positioned on the steering wheel and other strategic vantage points in the vehicle to detect a driver’s BAC from breathing, and from the driver’s skin when a start button is touched. In 2009, three companies each received $400,000 to perfect the research underlying these technologies. So far, DADSS reports it is on schedule to meet its 2013 delivery of a prototype. DADSS estimates that the earliest that vehicles equipped with alcohol detection systems would hit the market will be eight to ten years after that.

Even if a detection system which accurately prevents drunk driving gains traction, many folks are stalled at the notion that a detection system will retain the current use of a data logger. Indeed, data loggers would still record BAC, even if the vehicle will start. Do they have legitimate privacy concerns? There is, at least, an argument that evidence from data loggers, to the extent they are standard equipment and, thus, involuntarily

135 Unlike tissue spectrometry, which measures the amount of light absorbed when a Near-Infrared (NIR) beam is shone on the driver’s skin, but requires skin contact, distant spectrometry assesses the skin’s chemical makeup without requiring contact. Tissue spectrometry is currently used in when an offender, under order to refrain from imbibing any alcohol, is ordered to wear a tether to assure compliance (i.e. a scram bracelet). Ferguson Presentation (2009), supra note 130, at slide 34
137 Id.
139 Telephone Interview by Gabrielle Paschall with Susan Ferguson, Program Manager, DADSS (Aug. 9, 2010) [hereinafter Ferguson Interview].
140 The objection to having “Big Brother” control access to driving our vehicles is another question DADSS must answer. Ferguson Presentation (2009), supra note 130, at slides 39-41.
141 Intra-Subsystem Component to Component: “Interfaces between the DADSS sensor and the DADSS SPU shall perform in a manner to minimize the risk of manipulation by the vehicle owner, its authorized drivers, or other parties. Such techniques may include shielding of interfaces, rolling counters, or encrypted communication.” DADSS Performance Specifications, supra note 132, at 5. Tampering: “The DADSS Subsystem shall be designed and built such that it cannot be put out of service or be rendered ineffective or destroyed, without visible changes to the installation. The access to the data memory, to means for setting parameters and to adjustment possibilities shall be designed so as to minimize unauthorized or inadvertent interference.” Id. at 9.
imposed on the driver, invade a driver’s reasonable expectation of privacy in his or her vehicle. NHTSA defines an EDR as “a device or function in a vehicle that records the vehicles dynamic, time-series data during the time period just prior to a crash event or during a crash event, intended for retrieval after the crash event.” Events that trigger the EDR to save such data can include sudden deceleration, air bag deployment, or manual activation by the driver. Current automobile production models that incorporate this technology must record fifteen operating parameters. These parameters, which include elements such as vehicle speed, change in velocity, and driver seat belt status, are instrumental in accident investigation and air bag deployment.

Whether we know it or not, most of us are driving with EDRs: Approximately eighty-five percent of current vehicles are equipped with an EDR. NHTSA has recommended that all cars manufactured after September 1, 2010, be equipped with an EDR. Still, how data from EDRs should be used, particularly as admissible evidence in both civil and criminal trials, is fiercely debated. Typically, however, a challenge that the EDR does not meet the scientific standard for admissibility is unsuccessful. Few cases have


143 DOT HS 811 040, supra note 118, at 12.


145 Id.

146 In 2006, NHTSA estimated that 85% of vehicles would be equipped with EDRs. Event Data Recorders, 71 Fed. Reg. 51010 (codified at 49 C.F.R. pt. 563). “NHTSA estimated that about 64 percent of 2005 model passenger vehicles had the devices. By 2005, General Motors, Ford, Isuzu, Mazda, Mitsubishi, Subaru, and Suzuki were all voluntarily equipping all of their vehicles with EDRs, according to NHTSA. Recent information from vehicle manufacturers indicates that all new passenger vehicles have EDRs, although those EDRs may not include all of the data elements specified in the NHTSA rule.” Insurance Institute for Highway Safety, Q&As: Event Data Recorders, http://www.iihs.org/research/qanda/edr.html#cite1 (last visited July 28, 2010).

147 71 Fed. Reg. 51010. Although EDRs are not mandatory, for all vehicles manufactured after September 1, 2013, NHTSA has specified uniform, national requirements for vehicles equipped with EDRs concerning the collection, storage, and irretrievability of onboard motor vehicle crash event data. It also specifies requirements for vehicle manufactures to make tools and/or methods commercially available so that crash investigators and researchers are able to retrieve data from EDRs. Event Data Recorders, 49 C.F.R. § 563.1 (2008).


149 See, e.g., Com. v. Zimmermann, 873 N.E.2d 1215, 1220 (Mass. App. Ct. 2007) (holding that the admission of EDR data was proper because the prosecution’s expert was “amply qualified as an expert, had conducted 200 tests on EDRs, had taught and published on the subject, and had testified as an expert
considered constitutional challenges to the introduction of EDRs in criminal trials.\textsuperscript{150} A concurring opinion from the Tennessee Criminal Court of Appeals in \textit{State v. Holaday}, argued that data seized under a warrantless search was admissible.\textsuperscript{151} In \textit{People v. Christmann},\textsuperscript{152} the court held that after a fatal accident, an immediate download of EDR data does not violate the driver’s constitutional rights.\textsuperscript{153} It is possible to say more conclusively that a defendant’s Fifth Amendment challenge against self-incrimination will likely be rejected.\textsuperscript{154} The Fifth Amendment will only be violated where the evidence is testimonial. The United States Supreme Court has held that blood tests, breath tests, and DNA tests are not testimonial because they do not require communication from the offender;\textsuperscript{155} therefore, it is unlikely that retrieving data from the EDR will be considered

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\textsuperscript{150} The judge argued that the warrantless search fell under the warrant exception first established in \textit{Carroll v. U.S.}, 267 U.S. 132, 149 (1925), because the defendant’s car contained possible evidence of a crime: if the search and seizure without a warrant are made upon probable cause, that is, upon a belief, reasonably arising out of circumstances known to the seizing officer, that an automobile or other vehicle contains that which by law is subject to seizure and destruction, the search and seizure are valid. The Tennessee Criminal Court of Appeals did not reach the merits of the suppression issue because it held that it lacked jurisdiction.

\textsuperscript{151} The Court found only a diminished expectation of privacy in the mechanical areas of the vehicle and further found that that expectation must yield to the overwhelming state interest in investigating fatal accidents. \textit{Id.} at 441.

\textsuperscript{152} \textit{Schmerber v. California}, 384 U.S. 757, 763 (1966) (“The prohibition of compelling a man in a criminal court to be witness against himself is a prohibition of the use of physical or moral compulsion to extort
testimonial in nature either.\footnote{Shabazz, 946 A.2d at 635.}

Like it or not, when AIIDs are standard equipment, data loggers will be part of the package. If we drive with detectable levels of BAC, that evidence will be available.\footnote{According to the DADSS specifications, AIIDs will be able to detect and record BAC levels as low as .01. DADSS Performance Specifications, supra note 132, at 3.} Even if we are not legally drunk, but we cause an accident or drive recklessly, our vehicles will attest to our sobriety. But, the one thing we won’t be able to do is drive drunk. If we accept the notion that we do not have the right to make ourselves or others unsafe when we drive and, further, that our ability to assess our sobriety is faulty, there is an alternative on the horizon - a sober piece of technology to make the call that we are too drunk to drive.

How long will the journey take to remove drunk driving from the roads? If DADSS completes its work on time, there is a long administrative process ahead before NHTSA approves the device for manufacturing. Even with the quickest passage, AIID-equipped cars may not be rolling off the line until well into the mid-2020s. And there is no guarantee that passage will be easy, or not become political. To the extent that DADSS has the support of manufacturers, the political road may stay smooth. But, not every constituency favors AIIDs. The American Beverage Institute,\footnote{http://www.abionline.org/} for example, has already mounted a campaign charging that AIIDs on all cars would bring a “new prohibition” to the land.\footnote{“The universal application of [AIIDs] will translate into a de facto Prohibition…. Say goodbye to enjoying a glass of wine with dinner, a beer at a ball game, or a champagne toast at a wedding.” Interlock Facts, http://interlockfacts.com/ (last visited Aug. 24, 2010).} The warning should read, proceed with caution.

A Cautionary Tale

Assuming DADSS achieves its goal and identifies a passive AIID technology that will be feasible, effective, and affordable, the next step would be to submit the technology to the NHTSA for approval. On its face, the administrative process relative straightforward.\footnote{NHTSA must follow the Administrative Procedures Act specifications for notice, comment, and publication of proposed rules. 5 U.S.C. § 553 (1981): The notice must include the nature of the rule, reference to the legal authority under which the agency acts, and means for commenting on the rule. § 553(b). After notice in the Federal Register, “the agency shall give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation.” § 553 (c). After the agency considers the information and concerns presented during the comment phase, it will publish the rule in the Code of Federal Regulations, and thirty days later it will become effective. § 553 (d). However, Congress tightly monitors NHTSA’s rule-making authority. Before a promulgated rule is published, Congress must review the rule. 5 U.S.C § 801(a)(1)(A) (1996). When a rule is submitted, Congress will review the cost-benefit analysis conducted by NHTSA. § 801 (1)(B). In 1981, President Reagan was the first President to require a cost-benefit analysis. Exec. Order No. 12,291, 45 Fed. Reg. 13,193 (Feb. 19, 1981). President Clinton issued a new executive order regarding cost-benefit analysis that is still effective today. Exec. Order No. 12,866, 58 Fed. Reg. 38,235 (July 15, 1993).}
But, when it comes to safety equipment for vehicles, NHTSA has found itself ensnared in a political traffic jam that slowed progress to a crawl. History does not bode well.

When the nation’s highway death toll reached 50,000 annually in the 1950s, critics and consumers demanded safer automobiles.\textsuperscript{161} Individual states tried to respond to the nation’s highway death toll crisis by mandating certain safety features for vehicles.\textsuperscript{162}

Because of the high number of deaths and injuries resulting from traffic accidents, Congress enacted the National Traffic and Motor Vehicle Safety Act of 1966 (NTMVSA) and the Highway Safety Act of 1966.\textsuperscript{163} For over forty years, NHTSA has directed the highway safety and consumer programs these Acts required.\textsuperscript{164} Because of the difficulty in managing state-specific safety requirements, automobile manufacturers welcomed the establishment of an agency that would create uniform safety standards.\textsuperscript{165}

One of the first regulations the agency\textsuperscript{166} promulgated was Federal Motor Vehicle Safety Standard (FMVSS) 208.\textsuperscript{167} FMVSS 208 mandated installation of lap and shoulder belts in all new vehicles manufactured during or after 1968.\textsuperscript{168} FMVSS 208 was among several safety standards initially promulgated by the agency.\textsuperscript{169} Despite the well-documented

\footnotesize{Reg. 51,735 (Sept 30, 1993). The purpose of the cost-benefit analysis is to ensure “a regulatory system that protects and improves [the American people’s] health, safety, environment, and well-being and improves the performance of the economic without imposing unacceptable or unreasonable costs on society.” Id. \textsuperscript{161} Mike Davis, \textit{The Great Safety Belt Interlock Fiasco}, \textsc{The Detroit Bureau}, Nov. 9, 2009, available at http://www.thedetroitbureau.com/2009/11/the-great-safety-belt-interlock-fiasco/. \textsuperscript{162} Id.\textsuperscript{163} 15 U.S.C.A. § 1381 (1966), repealed by Pub. L. No. 103-272, § 7(b), 108 Stat. 1379 (1994). \textsuperscript{164} National Highway Traffic Safety Administration, About NHTSA, http://www.nhtsa.gov/About (last visited June 22, 2010). \textsuperscript{165} Davis, \textit{supra} note 161. \textsuperscript{166} The National Highway Safety Bureau was the original name given to the administrative agency. It was renamed NHTSA in 1970. Transportation Research Board, Special Report 278, \textit{Buckling Up: Technologies to Increase Seat Belt Use 4} (2003), available at http://onlinepubs.trb.org/onlinepubs/sr/sr278.pdf. \textsuperscript{167} 40 C.F.R § 571.208 (2010). \textsuperscript{168} “This standard has been upgraded to require that all new passenger vehicles be equipped with three-point belt systems and integrate lap and shoulder belts in a single detachable unit.” Transportation Research Board, Special Report 278, \textit{supra} note 166, at 4. \textsuperscript{169} Title 49 of the United States Code, Chapter 301 authorizes NHTSA to promulgate safety standards. These standards can be found in Title 49 of Code of Federal Regulations, Part 571. FMVSS 209, which deals with seat belt assembly was the first safety standard, effective 3-1-67. NHTSA then issued nineteen subsequent standards, effective 1-1-68. Those standards still effective today include:

1. \textit{Standard No. 101: Controls and Displays}. This standard requires that essential controls be located within the reach of the driver when the driver is restrained by a lap belt and upper torso restraint, and that certain controls mounted on the instrument panel be identified.
2. \textit{Standard No. 102: Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect}. This standard specifies the requirements for the transmission shift lever sequence, a starter interlock, and for a braking effect of automatic transmissions, to reduce the likelihood of shifting errors, starter engagement with vehicle in drive position, and to provide supplemental braking at speeds below 40 km/h (25 mph).}
3. Standard No. 105: Hydraulic and Electric Brake Systems. This standard specifies requirements for vehicles equipped with hydraulic and electric service brake systems and associated parking brake systems to ensure safe braking performance under normal conditions and emergency conditions.

4. Standard No. 106: Brake Hoses. This standard establishes performance and labeling requirements for hydraulic, air, and vacuum brake hoses, brake hose assemblies, and brake hose fittings for all motor vehicles. The purpose of this standard is to reduce brake system failure from pressure or vacuum loss due to hose or hose assembly rupture.

5. Standard No. 108: Lamps, Reflective Devices, and Associated Equipment. This standard specifies requirements for original and replacement lamps, reflective devices, and associated equipment. Its purpose is to reduce brake system failure from pressure or vacuum loss due to hose or hose assembly rupture.

6. Standard No. 109: New Pneumatic Tires. This standard specifies tire dimensions and laboratory test requirements for bead unseating resistance; strength, endurance, and high-speed performance; defines tire load rating; and specifies labeling requirements.

7. Standard No. 111: Rearview Mirrors. This standard specifies requirements for the performance and location of inside and outside rearview mirrors. Its purpose is to reduce the number of deaths and injuries that occur when the driver of a motor vehicle does not have a clear and reasonably unobstructed view to the rear.

8. Standard No. 116: Motor Vehicle Brake Fluids. This standard specifies requirements for fluids for use in hydraulic brake systems of motor vehicles, containers for these fluids, and labeling of the containers. The purpose of this standard is to reduce failures in the hydraulic braking systems of motor vehicles which may occur because of the manufacture or use of improper or contaminated brake fluid.

9. Standard No. 201: Occupant Protection in Interior Impact. This standard specifies performance requirements to provide head impact protection for occupants. Provides requirements for instrument panels, seat backs, sun visors, and arm rests. Interior compartment doors are required to remain closed during a crash.

10. Standard No. 203: Impact Protection for the Driver from the Steering Control System. This standard specifies requirements for minimizing chest, neck, and facial injuries by providing steering systems that yield forward, cushioning the impact of the driver’s chest by absorbing much of his or her impact energy in front-end crashes. Such systems are highly effective in reducing the likelihood of serious and fatal injuries.

11. Standard No. 204: Steering Control Rearward Displacement. This standard specifies requirements limiting the rearward displacement of the steering column into the passenger compartment to reduce the likelihood of chest, neck, or head injuries.

12. Standard No. 205: Glazing Material. This standard specifies requirements for glazing materials for use in motor vehicles and motor vehicle equipment for the purpose of reducing injuries resulting from impact to glazing surfaces. The purpose of this standard is to ensure a necessary degree of transparency in motor vehicle windows for driver visibility, and to minimize the possibility of occupants being thrown through the vehicle windows in collisions.

13. Standard No. 206: Door Locks and Door Retention Components. This standard specifies requirements for side door locks and side door retention components including latches, hinges, and other supporting means, to minimize the likelihood of occupants being thrown from the vehicle as a result of impact.

14. Standard No. 207: Seating Systems. This standard establishes requirements for seats, attachment assemblies, and installation, to minimize the possibility of failure as a result of forces acting on the seat in vehicle impact.
benefits of seatbelts, they were not effective in reducing the national highway death toll because people weren’t wearing them — over eighty percent of the public refused to wear them once they were installed even though seatbelts could reduce the risk of fatal injury for front-seat passengers by as much as forty-five percent.

Because NHTSA had no way of requiring people to wear seatbelts, it responded to public resistance by requiring automobile manufacturers to install “passive restraint systems,” which primarily focused on airbags, but also included automatic belt systems. In 1972, NHTSA required automobile manufacturers to install an alternative to passive restraint systems, such as a buzzer-light seatbelt reminder system.

Frustrated by technological delay and lack of public cooperation with seatbelts, NHTSA issued a rule, effective August 15, 1973, requiring that all 1974 model automobiles be equipped with a seatbelt ignition interlock (SIID). Its demise was swift.

Design flaws quickly emerged. Strong public outcry against the mandate followed. Many learned to disable the system, while others complained to state representatives. Consequently, in 1974, just one year after the SIID mandate became effective, Congress

15. Standard No. 208: Occupant Crash Protection. This standard originally specified the type of occupant restraints (i.e., seat belts) required. It was amended to specify performance requirements for anthropomorphic test dummies seated in the front outboard seats of passenger cars and of certain multipurpose passenger vehicles, trucks, and buses, including the active and passive restraint systems identified below. The purpose of the standard is to reduce the number of fatalities and the number and severity of injuries to occupants involved in frontal crashes.

16. Standard No. 210: Seat Belt Assembly Anchorages. This standard establishes requirements for seat belt assembly anchorages to ensure proper location for effective occupant restraint and to reduce the likelihood of failure. The requirements apply to any component, other than the webbing or straps, involved in transferring seat belt loads to the vehicle structure.

17. Standard no. 301: Fuel System Integrity. This standard specifies requirements for the integrity of motor vehicle fuel systems. Its purpose is to reduce deaths and injuries occurring from fires that result from fuel spillage during and after motor vehicle crashes.


172 Transportation Research Board, Special Report 278, supra note 166, at 4.

173 Id. When the driver started the vehicle, the buzzer-light system had to beep and flash for at least one minute, continuously. To deactivate the sound and light, the driver only had to extend the driver’s seatbelt. Id. at 42-43.

174 32 Fed. Reg. 3911 (1972). If the seatbelt was unfastened after the car had been started, an alarm would sound to warn the passenger to re-fasten the seatbelt. If the seatbelt was unfastened after the car had been started, an alarm would sound to warn the passenger to re-fasten the seatbelt. Transportation Research Board, Special Report 278, supra note 166, at 43.

175 For instance, any object weighing enough in the front seat triggered the IID. In addition, there were times when drivers had legitimate reasons not to initially fasten their seatbelts; for instance, some drivers complained that they could not turn around to back up with the seatbelt fastened. Davis, supra note 161.

176 Transportation Research Board, Special Report 278, supra note 166, at 5.
enacted legislation prohibiting NHTSA from requiring SIIDs and buzzer systems lasting for more than eight seconds.\textsuperscript{177} As of 1975, vehicles are only required to have a warning light reminding the driver to fasten his or her seatbelt which is activated when the car is started and also a chiming alarm that last up to eight seconds or until the driver fastens the seatbelt.\textsuperscript{178} Seatbelt IIDs, if not dead, will not be a front-line weapon for the foreseeable future.\textsuperscript{179}

It wasn’t until 1984 that NHTSA initiated a nationwide effort to increase seatbelt use through state-based seatbelt laws, and issued regulations requiring seat belts in all newly manufactured vehicles by 1990.\textsuperscript{180} As of 1983, no state had seatbelt laws.\textsuperscript{181} Perhaps the powers-that-be believed, correctly, as it turned out, that energy would be much better spent changing public perceptions about seatbelt usage. NHTSA was joined by the automobile industry’s “Traffic Safety Now,” a large-scale lobbying campaign to encourage states to pass seatbelt-use laws.\textsuperscript{182} The campaign ended in 1993, when ninety-three percent of the country’s population was subject to buckle-up laws.\textsuperscript{183} In addition to the car industry campaign, NHTSA also launched “Operation Buckle Down” in 1990.\textsuperscript{184} The “Click It or Ticket” campaign,\textsuperscript{185} considered the “cornerstone” of NHTSA’s seatbelt communications program, has undoubtedly contributed to the nation’s eighty-four percent seatbelt usage rate.\textsuperscript{186} The campaign involves more than 10,000 police agencies, and is supported by $8 million in national advertising.\textsuperscript{187}

There is a flip side to this ostensible success story: Even with eighty-four percent seatbelt use rate, forty-five million Americans still do not buckle up.\textsuperscript{188} Apparently, some of us are resistant to advertising. The message either doesn’t permeate or is ignored. Some people are willing to “roll the dice” and drive “unclicked.” They are confident they won’t get stopped, or they are tacitly

\begin{footnotes}
\item[178] Transportation Research Board, Special Report 278, supra note 166, at 43.
\item[179] In 2003, the Transportation Research Board stated, “At this time, the committee does not see any compelling need to delete the prohibition on requiring interlock systems.” \textit{id.} at 12.
\item[180] 49 C.F.R. § 571.208 (1992); see Kahane, supra note 171, at 1.
\item[181] But ten years later, forty-five states and Puerto Rico and Washington D.C. had passed them. Kahane, \textit{supra} note 171, at 1.
\item[182] Transportation Research Board, Special Report 278, \textit{supra} note 166, at 49.
\item[183] \textit{id.}
\item[184] The campaign, which lasted until 1992, sought to encourage local law enforcement to enforce seatbelt laws. \textit{id.} at 50.
\item[185] This federally funded program modeled after Canada’s comprehensive program, Canadian Selective Traffic Enforcement, was first introduced in North Carolina in 1993. Today, most states administer an annual month-long “Click It or Ticket” campaign in May or November, warning motorists of heightened policing of seatbelt violations. \textit{id.}
\item[187] The ads, which air on television, radio, and online, in English and Spanish, are designed to increase awareness of the increased enforcement efforts and the increased chance of getting a ticket if you are not buckled up. National Highway Traffic Safety Administration, Press Release, U.S. DOT Targets 45 Million Americans Still Not Buckling Up, http://www.nhtsa.gov/PR/DOT-101-10 (last visited Oct. 14, 2010).
\item[188] \textit{id.}
\end{footnotes}
willing to suffer the consequences of a seatbelt violation. Or, possibly, they believe that driving off in the car without taking the time to buckle up is more important than complying with seatbelt laws. In short, if standard safety equipment can be ignored, to some extent it will be.

Without seatbelt interlocks, we are forced to accept a certain degree of civil disobedience. As long as a driver can operate a vehicle without buckling up, eliminating violations is impossible. Given current compliance levels, however, there is reason to hope that the NHTSA initiatives will continue to lower the risk that unbuckled vehicle occupants will be unnecessarily injured in a collision.

When it comes to drunk driving, of course, the risk extends well beyond the vehicle occupants. Given current compliance levels, there is still a long road to travel before drunk drivers are off the road. Any plan to increase public acceptance of AIIDs must accept that public resistance to using safety equipment takes a long time to overcome. And, public resistance is not limited to using safety equipment which requires time-consuming tasks for the vehicle occupants. Even airbags, which do not require driver manipulation to operate, were objectionable.\textsuperscript{189}

Nonetheless, no one can seriously argue that advertising has not had an impact on getting folks to use seatbelts. The public relations goal has been to have buckling up be as automatic as turning the key in the ignition. And, to a great degree, the ploy has worked. There is some reason to hope that a public awareness campaign to promote AIID use will have similar success.\textsuperscript{190}

\textbf{In the meantime}

Even if AIID-equipped cars are available by the mid-2020s, unequipped vehicles will still be used for many years to come: “it takes approximately twenty years for a generation of cars to “die out.”\textsuperscript{191} Drunk driving will continue to pose a law enforcement and public

\textsuperscript{189} The public quickly lost confidence in the airbag due to the number of deaths or severe injury experienced by infants and young children who occupied the front-right passenger seat. Bryon Block, \textit{Auto Safety Expert, Tragedy of Airbag Fatalities to Children and Short Drivers, and How to Reduce the Hazard}, http://www.autosafetyexpert.com/Assets/Docs/article-airbagdefects.pdf (last visited Oct. 22, 2010). Additionally, “[f]rom the time NHTSA began to consider whether to require air bags or similar passive restraints, elements within the auto industry resisted. Automobile industry executives went so far as to meet secretly with President Richard M. Nixon in 1971 to urge him to call a halt to the efforts by NHTSA to force manufacturers to include air bags in their vehicle.” Ralph Nader & Joseph A. Page, \textit{Automobile-Design Liability and Compliance with Federal Standards}, 64 GEO. WASH. L. REV. 415, 435 (1996).

\textsuperscript{190} Surveys conducted by MADD found that there is public support for devices as punishment: sixty-five percent for mandatory installation for first time offenders and eighty-five percent of the public support it for repeat offenders. Dewey-Kollen & Downes, \textit{supra} note 20, at 18.

safety threat through most of the first half of the century. What role should current (after-market equipment) AIIDs play in the interim? Several approaches come to mind, which involve both the criminal justice system and the motor vehicle regulatory system.

One regulatory approach recommended here to require installation of AIIDS on commercial vehicles, especially those used for public transportation, public safety, and shipping of potentially dangerous or toxic materials. Sadly, we have known our share of commercial vehicle tragedies where the operator’s sobriety was at issue. Just because we have not tried that approach in this country, doesn’t mean others haven’t. Sweden’s example is worth considering.

In 2000, the Swedish Road Administration (SRA), starting with three companies – a bus, a taxi, and a truck company – funded installation of 100 AIIDs into 100 vehicles of each company. The goal was to gradually introduce AIIDs for all commercial use and, over time, other buses, taxis, and truck companies were included. Initially, Sweden planned to require all new trucks and buses to be equipped with AIIDs by 2010. Currently, Sweden requires AIIDs for all vehicles purchased for government agencies, and requires that private contractors working for the government equip AIIDs on any truck weighing over 2.5 tons. Many other commercial employers have voluntary adopted programs. Of the 200,000 commercial vehicles in Sweden, which includes heavy good vehicles, buses, taxis, and some light trucks and company cars, it is estimated that 60,000 are equipped with AIIDs. Significantly, there has been widespread public support for these efforts. Overall, most drivers experienced very little interference with routine driving responsibilities from the AIIDs. Skelleftea, one of the cities that hosted a portion of the pilot program, reported “The municipality is very pleased with the use of AIIDs…. There is a wide acceptance and understanding among staff…. There is also a

demonstrates that the average age of a household vehicle is between three and ten years. After twenty years, a model car becomes almost obsolete.)

192 The most notably example involved the Exxon Valdez, a supertanker carrying 53 million gallons of crude oil which ran aground on Bligh Reef, tearing the hull open, and spilling 11 million gallons of crude oil into the Prince William Sound. Exxon Shipping v. Baker, 129 S.Ct. 2605, 2612 (2008). Eleven hours after the spill, the Coast Guard administered a BAC test on Captain Joseph Hazelwood, which reported .061 blood-alcohol level. Id. at 2613. Experts testified that “to have this much alcohol in his bloodstream so long after the accident, Hazelwood at the time of the spill must have had a blood-alcohol level of around .241.” Id.
193 Robertson & Vanlaar (2008), supra note 56, at 54.
194 And on all new cars by 2012. ETSC, supra note 41, at 28.
195 Id.
196 Id. at 29.
197 This number continues to increase, making suppliers “hard pressed to keep up with the demand.” Id.
198 ETSC, supra note 41, at 24. Also, a survey conducted in Norway revealed that sixty-nine percent of passengers would accept delays due to technical problems with interlock devices if Norway implemented a commercial interlock program. However, only thirty-four percent of those surveyed would be willing to accept a price increase. Id.
199 Id. Single evaluation studies revealed that “[t]he drivers no longer felt that alcohol interlocks interfered in a negative way with their role as a driver, notwithstanding the long warming-up period in the wintertime.” Id at 29.
polITICAL CONSENSUS THAT [AIIDs] ARE NEEDED AND THE PUBLIC STRONGLY SUPPORTS THE USE OF THIS TECHNOLOGY.\textsuperscript{200}

In this country, there has been growing concern about safe operation of commercial vehicles.\textsuperscript{201} In 1995, for example, 376,000 large trucks (gross vehicle weight rating greater than 10,000 pounds) were involved in traffic crashes in the United States; 4,453 were involved in fatal crashes. One out of nine traffic fatalities resulted from a collision involving a large truck.\textsuperscript{202} The percentage of large truck drivers involved in fatal crashes who were intoxicated—with BAC levels of 0.10 or higher—was 1.3 percent in 1995.\textsuperscript{203}

Numerous efforts aimed at improving commercial vehicle driver safety have been adopted.\textsuperscript{204} Equipping trucks, buses, taxis, ambulances, and government vehicles with AIIDs would make it impossible to turn those vehicles into weapons of mass destruction.

Another recommendation for effective deployment of current after-market AIIDs would expand the New Mexico approach of requiring all offenders, particularly first offenders, to drive with an AIID-equipped vehicle.\textsuperscript{205} New Mexico attempts to address the recidivism once offenders complete the term of probation when they must use an AIID cannot be ignored. New Mexico provides for a lifetime AIID order only for a fourth or fifth conviction. But by then, it is way too late, for both the public safety and for the offender. Given the grisly statistics of the carnage that even first-time offenders leave on the roads, a more targeted legal punch is needed to keep offenders forever off the roads if they are impaired. The better approach would be to “decriminalize” drunk driving in favor of a stronger restriction of an offender’s driver’s license.

The recommendation here is that all first-time offenders be diverted out of the criminal justice system, and that motor vehicle departments (DMVs) be given the mandate to

\textsuperscript{200} Robertson & Vanlaar (2008), supra note 56, at 56.
\textsuperscript{203} Intoxication rates for drivers of other types of vehicles involved in fatal crashes in 1995 were 19.2 percent for passenger cars, 22.4 percent for light trucks, and 29.1 percent for motorcycles. \textit{id}.
impose up to a *lifetime* AIID requirement, which would be a noted restriction on the offender’s driver’s license.206 The DMV would retain the authority to remove the AIID restriction and restore full driving privileges after a minimum period of five years, upon a showing that the offender has completed an alcohol treatment program, and has not been involved in any criminal conduct where alcohol was involved.

The most obvious advantage of this approach would be the elimination of recidivism among first-time offenders. Additionally, all the costs of prosecution, and especially probation supervision, would be avoided if the consequence of drunk driving automatically led to driving restrictions. As with all moving violations, once a state’s DMV is notified of the ticket, license restrictions can be imposed. Driving privileges are typically suspended until the driver provides proof of compliance with the restriction. For drunk driving, the consequence would be that offenders would be required to provide proof that they have an AIID-equipped vehicle to obtain or renew a driver’s license. To the extent that criminal prosecution has a deterrent effect on the recalcitrant drinking driver, driving in violation of the AIID license restriction could be met with harsher penalties.

Granted, the cost of lifetime AIID operation would be substantial, but if a first offender is never convicted of drunk driving, the back-breaking cost of SR-22 insurance would be avoided.207 And, once AIID-equipped vehicles are available, an offender would no longer incur the costs of after-market AIID operation. In the meantime, the indignity, stigma, and lost productivity caused by a conviction would no longer plague a first offender whose crime has been to misjudge his or her sobriety. And, the possibility that full license privileges could be restored after a minimum five-year period would protect the offender whose initial drunk driving incident was not the culmination of chronic misjudgments.

There are some who would argue that lifetime license restriction would violate the prohibition against cruel and unusual punishment.208 Courts have routinely rejected arguments that extended license suspension constitutes cruel and unusual punishment.209

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206 Offenders whose driving causes property damage, personal injury or endangerment, would still face other criminal charges (from reckless driving to vehicular manslaughter).
207 See supra note 35 and accompanying text.
208 The Eight Amendment of the United States Constitution guarantees that “[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” U.S. CONST. amend. VIII.
209 See, e.g., *Heninger v. Charnes*, 200 Colo. 194 (1980), holding that a five year suspension of the defendant’s driver’s license after three DUI convictions was not cruel and unusual punishment. Based on prior jurisprudence, the Colorado Supreme Court reasoned that license revocations are “remedial action[s] designed to assure the general public safety in the use of its highways.” Id. at 201. Further, the revocation cannot be characterized as “grossly excessive, nor was it arbitrarily imposed in a severe or cruel manner.” Id. Similarly, in *Yeargin v. South Carolina Dept’t of Highways and Public Transp.*, 313 S.C. 387, 389 (1993), the South Carolina Supreme Court held that cruel and unusual punishment clause was not applicable to extended license suspension because the suspension was proportion to the severity of the crimes: “The length of each of respondent’s license suspensions are not disproportionate to the individual DUI and DUS [driving under suspension] convictions. The fact that the suspensions . . .
Statutes which provide for *lifetime* license suspension upon conviction of drunk driving offenses have also withstood constitutional challenge. Under the proposed recommendation, which would not result in a conviction, any constitutional challenge to a lifetime AIID restriction holds even less weight.

The final suggestions for interim AIID use to deter drunk driving concern the public relations campaign which must take place to pave the way for acceptance of AIIDs as standard equipment. As noted earlier, consumer breathalyzers are currently available for purchase. What is recommended here is substantial funding for public service announcements and other advertising to encourage the use of consumer breathalyzers. Many bars have installed breathalyzers for customer use. A further recommendation is for development of incentives to encourage drinking establishments to install breathalyzers and direct customers to use them. For example, dram shop liability insurance premiums could be reduced for drinking establishments that install breathalyzers.

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constitute a substantial period of time is due to respondent’s repeated violations of the law.” Likewise, a Pennsylvania court rejected the offender’s cruel and unusual punishment challenge for a seven year license revocation after four convictions of drunk driving. Yeckley v. Commw. Dep’t of Transp., 474 A.2d 71, 72 (Pa. Commw., 1984). The court reasoned that the revocation did not “shock the general conscience.” *Id.* See also Owens v. State, 178 Ind. App. 406 (1978) (holding that a ten year license suspension under the Habitual Traffic Offenders Statute did not violate the cruel and unusual punishment clause); Dragowski v. Commonwealth, 503 A.2d 104 (Pa. Commw. 1986) (holding a cruel and unusual punishment challenge insufficient for a five year license revocation under a habitual traffic offender statute); Tenn. Op. Atty. Gen. No. 04-111, 2004 WL 1698344 (rejecting an Eight Amendment challenge against a law requiring a person convicted of drunk driving to have a special license plate indicating that the offender was convicted).

See *State v. Myers*, 411 N.W.2d 402 (S.D. 1987), which upheld a lifetime license suspension against an Eighth Amendment challenge: “This court will not extend an Eighth Amendment proportionality analysis to that part of a felony sentence which consists in the lifetime revocation of a driving privilege…. Revocation of Myers’ driver’s license was done for the protection of the public and not merely for the purpose of enhancing his punishment.” *Id.* at 402. Similarly, in *State v. Ringler*, 2009 WL 4342502 (Ohio Ct. App. 2009), the Court held “a lifetime driver license suspension … is not so grossly disproportionate to the offense as to shock the sense of justice in the community.” *Id.* See also, Cormier v. Commissioner of Motor Vehicles, 938 A.2d 1258 (Conn. App. Ct. 2008); Shaw v. Vermont Dist. Court, Unit No. 3, Franklin Circuit, 563 A.2d 636 (Vt. 1989); *State v. McGuire*, 188 P.3d 425 (Or. Ct. App. 2008), all upholding lifetime license suspension against challenges under the Equal Protection Clause (U.S. Const. amend XIV, § 1).

*DADSS* has a long range public relations plan to promote acceptance of AIID-equipped vehicles. Ferguson Presentation (2009), supra note 130, at Slide 43. DADSS has received an additional $250,000 in funding to support its public awareness efforts. Ferguson Interview, supra note 139.

See supra note 71 and accompanying text.


Dram shop laws establish the liability of establishments arising out of the sale of alcohol to visibly intoxicated persons or minors who subsequently cause death or injury to a third party as a result of alcohol-related car crashes and other accidents. Dram shop insurance provides protection for dispensers of alcoholic beverages against suits arising out of bodily injury and/or property damage caused by its
In general, law enforcement and MADD do not endorse consumer breathalyzers, because they are (allegedly) imprecise, and so can lead to a false sense of security. Both MADD and law enforcement recommend the alternative of finding a sober driver.\textsuperscript{215} Not everyone agrees that consumer breathalyzers should be discouraged. For example, Don’t Die Drunk, a nonprofit organization fighting to reduce drunk driving accidents, advocates their use and placement in places that serve alcohol.\textsuperscript{216} This makes imminent sense. The best way to get the public used to the idea of AIID-equipped cars is to increase the presence and voluntary use of breathalyzers in daily life. Getting folks to voluntarily purchase and use breathalyzers to check their own sobriety could go a long way toward overcoming resistance to a pre-market AIID-equipped vehicle.

Of course, folks who do not drink and drive have no reason to use a consumer breathalyzer. For them, paying for AIIDs as standardized equipment may be a harder sell. Obviously, the cost will be inevitably passed onto the consuming public. But, the cost society already pays from the repercussions of drunk driving — medical expenses, property damage, lost productivity, strain on the legal and corrections system — is borne equally among the drinking and non-drinking public. Paying for pre-market AIID-equipped cars only changes the point in time when society is charged the cost of drunk driving. And, the cost would doubtless be less, particularly if the non-monetary impact of drunk driving (loss of loved ones, pain and suffering, etc.) is added to the mix. The response to non-drinkers who object to paying for AIID-equipped vehicles is to remind them that no one is invincible before the drunk driver’s advance. Whether or not a driver drinks or not is almost beside the point. As long as anyone can drink and drive, everyone is a potential victim. A parent’s worst nightmares — a child killed by drunk driver, or a child-turned-killer from taking one drink too many — do not spare the non-drinker.

And, what about the young man I know who has completed probation? He hated every minute he had to breathe into a machine to start his car, not to mention the rolling retests when he had to repeat the whole process. He hated the embarrassment and humiliation he experienced as passengers — co-workers, dates, family, and the children of friends — watched him. If he were still forced to blow into a breathalyzer because he had been slapped with a five year-to-lifetime interlock order, would his life be intolerably


\textsuperscript{216} Its motto is “Breathalyzers are \textit{Prevention NOT Prosecution Tools!\textsuperscript{2}}, Don’t Die Drunk, http://www.dontdiedrunk.org/ (last visited Oct. 8, 2010).
burdened? Would it matter that he hasn’t had a drink in two years? Or, does it matter more that before then, after the interlock order was lifted, he was twice convicted of drunk driving? Had that interlock order remained in place, chances are he never would have driven drunk again. On his current record, with three drunk driving convictions to his name, no matter how he may have reformed his life, a DMV would be unlikely to lift a lifetime restriction, if that option were available. Until the day that AIID-equipped cars are on the market, the option to permanently keeping offenders off the roads unless they use a breathalyzer should be available. Eventually, offenders will be able to provide proof of purchase of an AIID-equipped vehicle, and get their full license privileges restored. Hopefully, that day will come sooner than later.