



THE IMPLEMENTATION OF ALCOHOL INTERLOCKS FOR FIRST OFFENDERS: A CASE STUDY



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THE IMPLEMENTATION OF ALCOHOL INTERLOCKS FOR FIRST OFFENDERS: A CASE STUDY

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EXECUTIVE SUMMARY



Many jurisdictions are currently considering alcohol interlock programs for first offenders. There is a wealth of information that is relevant to this decision-making process and much can be learned from jurisdictions that have already implemented a program.

This case study is designed to assist jurisdictions in understanding the issues that are relevant to the decision-making process. It also illustrates the importance of translating legislation and policy into meaningful practices and procedures at an operational level to ensure full program participation. It contains a descriptive summary of the scope and breadth of activity in Illinois associated with implementing a first offender interlock program. It also compares the experience in Illinois with the experiences in four other jurisdictions representing a diversity of alcohol interlock programs. These states¹ include Colorado, Nebraska, New York and Washington.

What is an alcohol interlock?

An alcohol ignition interlock is a breath testing device that connects to the vehicle starter or other on-board computer system. The device prevents a vehicle from starting if the breath test reveals a breath alcohol concentration (BrAC) that exceeds a certain pre-set limit, usually 0.02%. This device requires the driver to pass repeated breath tests while the vehicle is in use to ensure that the driver remains sober throughout the driving trip. These programmable devices also possess a range of anti-circumvention features.

How have alcohol interlock programs evolved?

In the past two decades there has been tremendous growth in alcohol interlock programs for drunk driving offenders and almost all jurisdictions in the United States and Canada have some type of program in place. Historically, participation was linked to a drunk driver's criminal status. Participation was mandatory for repeat and high-BAC offenders – those deemed to be the greatest risk to the public and who had the highest probability of re-offending. Participation was more often voluntary for first offenders. More recently, a trend toward mandatory participation for all offenders has emerged.

¹ Arizona and New Mexico were also invited to submit a summary of their experiences with the implementation of a first offender interlock program, however due to timing and competing priorities it was not possible to receive a summary prior to the printing of this report

Is there a debate about first offender alcohol interlock programs?

Yes and no. There is clear agreement that there are important benefits associated with the use of these devices with first offenders, and more importantly potential cost benefits assuming that all of the interlock devices are actually installed. However, there is no clear consensus about how to best implement such a program, particularly in light of the low program participation rates and interlock installation rates that have persisted due to weaknesses in program implementation. The heart of the debate stems from concern about increasing the number of offenders that are subject to monitoring without effective strategies and commensurate capacity to ensure that all offenders will in fact participate.

It is clear that the debate regarding first offender interlock programs is complex and both sides are based on compelling research and facts. The question is not whether first offender interlock laws should be implemented, but in fact how these laws can best be implemented and executed. Is it better to put legislation in place requiring all drunk driving offenders to install an alcohol interlock when there is currently little assurance that every offender will install the device and be actively monitored by program authorities as needed? Or is it better to strengthen program structure and implementation and ensure adequate resources are allocated before widening the net to dramatically increase program participation? These are questions that jurisdictions will have to address as the trend towards mandatory first offender alcohol interlock programs grows.

Why use alcohol interlocks with first offenders?

There is solid research to support the use of alcohol interlocks with first offenders:

- > Research shows that drunk drivers can drink and drive more than 200 times before being detected and apprehended (Beck et al., 1999). So, many drunk drivers who are arrested for the first time are in fact repeat drunk drivers who have managed to avoid detection and arrest.
- > Seventy percent of drunk driving offenses in many jurisdictions involve drunk drivers with no prior drunk driving conviction (Voas and Fisher 2001). Research shows that recidivism does occur among this population and that alcohol interlocks are effective in reducing recidivism with these offenders (for supporting research see EMT Group 1990; Morse and Elliot 1992; Tippetts and Voas 1997; Voas et al. 1999; Voas et al. 2005).
- > Research suggests that between 25% and 75% of offenders who have a driver's license that is suspended or revoked continue to drive, making them a threat on the roadways (Waller 1985; Hagen

et al.1980; Sadler and Perrine 1984; Peck et al. 1985; Ross and Gonzales 1988; Griffin III and De La Zerda 2000).

- > Many first offenders also frequently drive with high-BACs that are more than twice the legal limit and also have a significant risk of crashing (Rauch 2005).
- > Research shows that many first offenders have some degree of alcohol abuse or addiction. One study revealed that 82% of first offenders were assessed as alcoholics or problem drinkers; only 18% were social drinkers (Rauch 2005).
- > A cost-benefit analysis suggests that alcohol interlocks are a cost-effective measure. A study that assumed that alcohol interlock devices are actually installed in the vehicles of all impaired drivers showed an estimated cost-benefit ratio of 8.75 (Elvik 1999), meaning that for every dollar spent on alcohol interlocks there will be a savings of almost nine dollars.

What are the challenges of using interlocks with first offenders?

Concerns about the use of alcohol interlocks with first offenders stem from a variety of practical historical issues related to insufficient program resources and weak program implementation. These factors have contributed to low participation rates, even when participation has been mandated. As evidence of this, of the 1.4 million impaired drivers arrested annually, just 180,000 have an interlock device installed, and program participation is less than 20% in most jurisdictions. Concerns that are raised about first offenders include:

- > Research shows that repeat offenders and high-BAC offenders are at a much higher risk of crashing and are responsible for a majority (74-76%) of alcohol-related deaths and injuries (Borkenstein et al. 1964; Simpson et al. 2004; Blomberg et al. 2009) making them a significant risk to the driving public and a priority for participation and the use of program resources.
- > Research shows that, even among those offenders who are formally ordered by the program authority to install an interlock device, some 20% to 25% of offenders fail to do so (EMT Group 1990, DeYoung 2002) – i.e., gaps in implementation enable some offenders to avoid interlock supervision. In particular, research suggests that repeat offenders are less likely to participate in alcohol interlock programs and install the device (Voas and Tippetts 1997). Mandatory program participation for first offenders can compound this problem and enable a much larger population of offenders to avoid installation, eroding deterrent effects.
- > All-offender programs would substantially increase the number of offenders in need of interlock supervision, requiring an increase in

resources that may not produce benefits without assurances that interlocks will actually be installed.

- > In many jurisdictions, first offenders are not subject to monitoring by the criminal justice system. In court-based interlock programs this would be a substantial gap in the ability of authorities to monitor first offender participation in programs to ensure their participation and to follow up in response to violations.

Concerned individuals suggest an alternative strategy to include first offenders in alcohol interlock programs. It involves retaining a primary and current focus on repeat and high-BAC offenders in combination with steps to improve program implementation and ensure that all offenders mandated to install the interlock actually do so and are supervised. As practices are strengthened, programs can be expanded to include first offenders.

What kind of first offender interlock law was passed in Illinois?

In June 2007, Illinois legislation extended the use of alcohol interlocks from repeat offenders to first offenders on a voluntary basis, meaning that first offenders did have the ability to avoid participation and refrain from driving during the suspension period. This legislation had the potential to create significant growth in the population of interlock offenders and increase the number of participants from 3,000 to as many as 30,000 if all eligible first offenders elected to participate.

What tasks were involved in the implementation of the law?

The Illinois Secretary of State (SOS) was tasked with implementing the law which took effect January 1, 2009. A wide variety of tasks, assigned to six committees, were required as part of the first offender implementation in Illinois, including:

- > Translating the legislation into administrative rules that were also consistent with existing Administrative Rules. This is often the most challenging task in any state.
- > Identifying errors or inconsistencies in the legislation and proposing revisions.
- > Anticipating the financial impact of the program on state agencies.
- > Developing a strategy for managing indigent offenders.
- > Revising existing forms/letters/notices and creating new forms/ letters/notices for first offenders. For example, in Illinois there were approximately 30 forms/ letters/notices that were involved in this process.
- > Changing the existing driver record program to accommodate first offenders.

- > Developing an interlock database to collate and manage reports from interlock vendors and generate automatic responses to a wide variety of events.
- > Establishing connections between the driver records and the interlock databases.
- > Creating new program fees and an indigent funding mechanism.
- > Developing and delivering statewide training materials to all relevant practitioners across the jurisdiction (including police, prosecutors, defense attorneys, judges, court clerks, driver licensing staff, liquor enforcement, liquor control).
- > Developing and delivering press events and statewide information materials.
- > Fielding thousands of calls from agency staff, the public and offenders.

How many staff and how much staff time did it take?

Each of the six committees ranged in size between seven and fifteen staff persons (with some people participating in multiple committees). The work of each committee took between 9 and 20 months to complete. The estimated percentage of time that each committee staff person was allocated to support the implementation of the program during this period ranged from 10% - 90%.

What SOS departments were involved in implementation?

- > Administrative hearings
- > Driver services
- > Programs and policies
- > Executive office
- > General counsel
- > Information technology
- > Deputy press secretary
- > Budget and fiscal division
- > Accounting/revenue

What other agencies were affected by implementation?

- > Illinois Department of Transportation/Office of Highway Safety
- > Illinois traffic safety resource prosecutors

- > State and local police
- > State Attorney offices
- > Defense bar
- > Judiciary and court staff
- > Liquor enforcement
- > Liquor control
- > MADD chapters

In total, what resources were required for implementation?

The total cost of implementation for the State of Illinois is estimated at slightly more than \$1.24 million (USD). This estimate includes a variety of costs including a statewide symposium, training, staff salaries, the hiring of additional staff, direct costs, and related costs such as retirement and group insurance costs. The costs of the two COBOL programmers who worked on the database are also included in these costs. The hard costs associated with implementation included additional office space for new staff, office equipment, computer and phone set up costs, office supplies, and printing.

Not all of these costs were paid by the Secretary of State, the lead agency responsible for the first offender alcohol interlock implementation. Costs were also supported by the Illinois Office of Highway Safety and IDOT. The Highway Safety Office provided \$300,000 in Federal highway dollars to support additional staff and staff travel to deliver training and education across the State. IDOT also provided a \$25,000 grant to support the costs of the interlock symposium that was organized for law enforcement.

What were the outcomes of implementation?

Overall, the implementation of a first offender program in Illinois went very well and no major challenges occurred when the program took effect. In particular, there were two key factors that were critical to Illinois' successful implementation process. First, there was strong political and agency leadership to ensure that adequate staff support and resources were made available. Second, there was strong teamwork, coordination, and communication across agencies and staff roles and responsibilities were clearly articulated. Of equal importance, staff also had some 18 months to adequately prepare for implementation.

The launch of the program went according to plan. It operated as expected and within ten days applications for the program were received. With regard to the technical aspects of the new program, there have been few computer issues

associated with the new program and everything appears to be working smoothly to date. Minor issues did arise but were easily addressed. There were several revisions to finer details of the legislation post-implementation, however most of it related to minor inconsistencies.

How many offenders participated in the first year?

One year after the official launch of the Illinois program, just 6,500 of an estimated 30,000 first time drunk drivers have enrolled in the program. This has occurred because the Illinois program is not mandatory — first offenders can choose not to participate. The SOS in Illinois is carefully tracking this issue and opportunities to strengthen the program and make it truly mandatory are being considered for the next legislative session.

Have other first offender jurisdictions had similar experiences?

Yes. A review of the experiences in Colorado, Nebraska, New York and Washington revealed a number of commonalities as well as a few unique strategies.

Each state greatly benefited from strong political and agency leadership to support the implementation of the law. In addition, all states relied upon an implementation team that functioned as a single unit or was organized into committees. Within each team, there was a core group of individuals that completed the bulk of the work. There were also high levels of communication, coordination and accountability involved in the implementation process which ensured that tasks were completed in a timely, accurate and structured manner and resulted in fewer challenges post-implementation.

Most states felt that they had sufficient time for implementation of the law, although the effort required in each state was often a function of the actual contents of the legislation and the law's consistency with existing program practices. Those states that automated much of the process required more time, however it is agreed that the additional effort required to automate the process at the outset is an excellent investment and can improve program management downstream.

The level of resources required for implementation varied, particularly in relation to the extent to which states automated much of the process. Few states were able to absorb the costs of implementation into existing agency budgets, and those that were not required additional funding up to \$900,000 to cover a variety of tasks. The most expensive costs associated with implementation included IT changes and additional staffing.

Those states that worked with program staff during the development of legislation encountered fewer operational and legal challenges during and post-implementation. In states where practitioner input was sought as part of the process, agencies were able to implement the law in a much shorter time frame and were better prepared.

Almost all states did struggle to varying degrees with the development of a funding mechanism and a strategy to identify indigent offenders. However, program staff agreed that the inclusion of this component in a program was essential.

Finally, all states did experience some growth in program participation as a result of implementation, however ongoing efforts are needed in this area to achieve the maximum potential. Experience has demonstrated that when offenders are given the opportunity to opt out of the program, the majority of offenders will do so.

Which jurisdictions have first offender laws as of May 2010?

A number of jurisdictions have implemented first offender alcohol interlock laws as of May 2010. However, the nature and extent of these laws vary across jurisdictions.

Please note that in the table below the term “mandatory” can have different contexts. In some jurisdictions the interlock is mandatory for first offenders during the period of suspension, whereas in others the interlock is mandatory in order to be eligible for license reinstatement. The term “no interlock law” means that there is no interlock law either for repeat or first offenders. The term “yes” means that there is legislation for first and repeat offenders. The term “no” means that there is no legislation for first offenders. However in a few jurisdictions judges can order interlocks on a voluntary basis.

STATE	FIRST OFFENDER LEGISLATION	BAC	VOLUNTARY / MANDATORY	DATE IMPLEMENTATION
Alabama	No Interlock Laws*	N/A	N/A***	N/A
Alaska	Yes**	0.08%	mandatory	June 2008
Arizona	Yes	0.08%	mandatory	May 2007
Arkansas	Yes	0.08%	voluntary	April 2009
California	Yes (pilot program)	0.08%	mandatory	July 2010
Colorado	Yes	0.08%	mandatory	April 2008
Connecticut	No***	N/A	N/A	N/A
Delaware	Yes	0.15%	voluntary	July 2009
DC	No	N/A	N/A	N/A
Florida	Yes	0.15%; under 21	mandatory	June 2008
Georgia	No	0.08%	voluntary	
Hawaii	Yes	0.08%	mandatory	January 2011
Idaho	No	N/A	N/A	N/A
Illinois	Yes	0.08%	voluntary	August 2007
Indiana	No	N/A	N/A	N/A
Iowa	No	N/A	N/A	N/A
Kansas	Yes	0.15%; refusals	mandatory	
Kentucky	No	N/A	N/A	N/A
Louisiana	Yes	0.08%	mandatory	July 2007
Maine	No	N/A	N/A	N/A
Maryland	Yes	0.15%	mandatory	
Massachusetts	No	N/A	mandatory	N/A
Michigan	Yes	0.15%	mandatory	January 2011
Minnesota	No	N/A	N/A	N/A
Mississippi	No	N/A	N/A	N/A
Missouri	No	N/A	N/A	N/A
Montana	No	N/A	N/A	N/A
Nebraska	Yes	0.08%	mandatory	April 2008
Nevada	Yes	0.18%	mandatory	
New Hampshire	Yes	0.15%		
New Jersey	Yes	0.15%	mandatory	January 2010
New Mexico	Yes	0.08%	mandatory	June 2005
New York	Yes	0.08%	mandatory	August 2010
North Carolina	Yes	0.15%	mandatory	August 2007

STATE	FIRST OFFENDER LEGISLATION	BAC	VOLUNTARY / MANDATORY	DATE IMPLEMENTATION
North Dakota	No	N/A	N/A	N/A
Ohio	No	N/A	N/A	N/A
Oklahoma	No	N/A	N/A	N/A
Oregon	No	N/A	N/A	N/A
Pennsylvania	No	N/A	N/A	N/A
Rhode Island	No	N/A	N/A	N/A
South Carolina	No	N/A	N/A	N/A
South Dakota	No Interlock Laws	N/A	N/A	N/A
Tennessee	No	N/A	N/A	N/A
Texas	Yes	0.15%	voluntary	October 2005
Utah	Yes	0.08%	mandatory	March 2009
Vermont	No Interlock Laws	N/A	N/A	N/A
Virginia	Yes	0.15%	mandatory	March 2004
Washington	Yes	0.08%	mandatory	March 2008
West Virginia	Yes	0.15%	mandatory	April 2008
Wisconsin	Yes	0.15%	mandatory	July 31, 2010
Wyoming	Yes	0.15%	voluntary	March 2009

* 'No Interlock Laws' means no legislation for first and repeat offenders

** 'Yes' means legislation for first and repeat offenders

*** 'No' means no legislation for first but legislation for repeat offenders but some judges do order interlocks

What can be learned from the experiences of first offender alcohol interlock jurisdictions?

Based on the experiences of jurisdictions with the implementation of a first offender alcohol interlock program, in conjunction with the experiences of other jurisdictions with similar programs, several recommendations can be drawn.

- > The importance of a well-crafted law that is based on input from experienced program staff, legal staff and is reflective of existing operational practices cannot be overstated.
- > Input from front line agency staff that are familiar with the existing interlock program and input from staff representing agencies that will be impacted by a first offender program should be sought to

inform the development of first offender legislation and ensure that it is consistent with existing practices.

- > Program implementation requires strong political and agency leadership to build agency buy-in and staff support as well as public support.
- > It is important to balance the level of detail in the legislation and administrative rules to provide practitioners with reasonable flexibility to make needed adjustments during program development without requiring additional legislative changes, which may be challenging to achieve.
- > Consultation with and input from agency staff can benefit program development. Agency representation and active staff participation on any committees or teams tasked with implementation is essential, particularly for those agencies that will be affected or implicated by decisions.
- > It is very helpful to include representatives from the interlock vendors as they have knowledge about program operation in other jurisdictions as well as experience dealing with offenders and operational issues.
- > Accountability for implementation should be articulated through clear task assignments, reporting processes, timelines and ongoing follow up to ensure tasks are completed.
- > Adequate resources to support program implementation should be allocated accordingly. It is critical that staff have access to needed resources to support implementation and understand how these resources are being provided.
- > Training is an essential element for staff in all agencies that will be affected by the implementation of the program. This is necessary to create support and buy-in and to properly equip staff to complete tasks as part of the program.
- > It is important to provide the public with information about the program before, during and post implementation. Information should be disseminated using multiple sources and materials should be easily accessible. Communication can build public support and reduce staff time to respond to inquiries.
- > It can be beneficial to build a self-funded mechanism for the program into the implementation process.

1.0 INTRODUCTION



1.1 Alcohol Interlocks for First Offenders

An alcohol ignition interlock is a breath testing device that connects to the starter or other on-board computer system of a vehicle. The device prevents the vehicle from starting if breath test results show a breath alcohol concentration (BrAC) is found to exceed a certain pre-set limit, usually corresponding to a blood alcohol concentration (BAC) of 0.02%. This device also requires the driver to continue to pass repeated breath tests while the vehicle is in use to ensure that the driver remains sober throughout the driving trip. In addition, these programmable devices possess a range of anti-circumvention features. It should be noted that the alcohol interlock will never interfere with a running engine.

In the past two decades there has been tremendous growth in alcohol interlock programs for impaired driving offenders. At present, a majority of jurisdictions in the United States and Canada have some form of alcohol interlock program in place. Historically, participation in these programs has been a function of the impaired driver's criminal status. Mandatory participation was targeted towards repeat and high-BAC offenders – those deemed to be the greatest risk to the public and who had the highest probability of re-offending. The participation of first offenders in interlock programs was often on a voluntary basis.

More recently, a new trend in alcohol interlock programs has emerged as several states have introduced legislation making it mandatory for all convicted drunk driving offenders to install an interlock device on their vehicle. Since 2005, mandatory first offender alcohol interlock legislation has been passed in a number of jurisdictions, including Alaska, Arizona, California (pilot program), Colorado, Hawaii, Louisiana, Nebraska, New Mexico, New York, Utah, and Washington. A few other states have also implemented first offender interlock legislation, however participation of first offenders has not been made mandatory. These jurisdictions include Illinois and Arkansas.

This trend in interlock legislation appears to continue in 2010 as more jurisdictions proposed laws relating to the use of interlocks among first offenders – either all first offenders or just high-BAC first offenders. States proposing mandatory interlock use for first offenders include: Florida, Iowa, Kentucky, Massachusetts, Missouri, Mississippi, Ohio, Pennsylvania, Rhode Island, Tennessee, and Virginia. Those states

proposing voluntary first offender interlock legislation include Alabama, Indiana and Vermont.

At first glance, there appears to be some debate surrounding the first offender interlock issue – some agencies and jurisdictions strongly support this move whereas others have raised questions and some concerns. However, a closer examination of the issue reveals that the debate is less a function of whether or not the legislation should be implemented and more a function of execution – i.e., meaning when and how it should be implemented.

Proponents of alcohol interlock legislation that would make program participation mandatory for first offenders have a clear rationale to pursue this course of action that is well-supported by research. First, research demonstrates that many drunk driving offenders can drink and drive more than 200 times before being detected and apprehended (Beck et al., 1999). Hence the term first offender often refers to the first time the individual has been caught, as opposed to the first time they have driven while impaired. So many first offenders are in fact repeat offenders who have managed to avoid detection and arrest, making them an appropriate population for supervision with an alcohol interlock.

Second, in many jurisdictions first offenders account for a majority of drunk driving offenses. It is estimated that up to 70% of impaired driving offenses are attributed to first offenders (Voas and Fisher 2001). Research shows that recidivism does occur among this population and that alcohol interlocks are effective in reducing recidivism with this group of offenders (for supporting research see EMT Group 1990; Morse and Elliot 1992; Tippetts and Voas 1997; Voas et al. 1999; Voas et al. 2005).

Third, research also suggests that between 25% and 75% of those offenders who have a driver's license that is suspended or revoked do continue to drive, making them a threat on the roadways (Waller 1985; Hagen et al. 1980; Sadler and Perrine 1984; Peck et al. 1985; Ross and Gonzales 1988; Griffin III and De La Zerda 2000). While all first offenders are subject to some period of license suspension or revocation following a drunk driving offense this does little to prevent them from subsequently drinking and driving during this period. Conversely, an alcohol interlock can prevent them from starting their vehicle when their BAC is over the pre-set limit, usually 0.02%.

Fourth, many first offenders also frequently drive with high-BACs that are more than twice the legal limit and, therefore, also have a significant risk of crashing (Rauch 2005), making them an important target population for interlock usage.

Fifth, there is also research demonstrating that many first time drunk driving offenders suffer from some degree of alcohol abuse or addiction. As evidence of

this, in Quincy, Massachusetts, Judge Albert Kramer ordered all offenders convicted of a first drunk driving offense to undergo clinical evaluations. In total, 1,252 first offenders were assessed by three reputable treatment agencies in New England using a two-day evaluation. More than 80% were assessed as alcoholics or alcohol dependent and only 18% were found to be social drinkers (Rauch 2005). This level of alcohol misuse makes it unlikely that these offenders will be able to stop drinking without some form of intervention – i.e., meaning that these offenders are at high risk to continue drinking and driving, placing the public at risk. Alcohol interlocks permit first offenders to learn to control their drinking problem without placing the public at risk.

Finally, cost-benefit analyses suggest that the alcohol interlock is a cost-effective measure that can contribute to large reductions in the number of alcohol-related fatalities and injuries on the nation's roadways if properly implemented. Installing alcohol interlocks in the vehicles of all impaired drivers would have an estimated cost-benefit ratio of 8.75 (Elvik 1999). This figure can be interpreted to mean that for every dollar spent on alcohol interlocks there will be a savings of approximately nine dollars, or conversely, there will be an estimated cost saving of almost \$9.00 for each \$1.00 of cost incurred.

In light of this strong and convincing scientific evidence, the concerns that have been voiced in regard to the mandatory use of interlocks with first offenders may at first appear perplexing. It must be noted that this research is not disputed by those who have raised questions about these initiatives. Conversely, the issues that are raised stem from a variety of practical concerns relating to the ways in which interlock programs have historically been implemented and the low interlock program participation rates that have resulted because of offenders failing to participate, even when mandated to do so. As evidence of this, of the 1.4 million impaired drivers arrested annually, just 180,000 have an interlock device installed, and program participation is less than 20% in most jurisdictions.

In light of these experiences, it is considered imperative that a greater emphasis be placed on ensuring offenders participate in programs and install the devices before expanding programs to include more offenders. For this reason, they propose an alternative strategy that involves retaining a primary and current focus on repeat and high-BAC offenders in combination with steps to improve program implementation to ensure that all of the offenders mandated to install the interlock device actually do so and are actively supervised as needed. Once these practices have been strengthened, programs could then be expanded to include all first offenders that have a drinking problem that needs to be addressed.

There is also a sound rationale in support of this approach that is supported by research. First, there is research that demonstrates that repeat offenders and

high-BAC offenders are at a much higher risk of crashing and are responsible for a substantial proportion (74-76%) of alcohol-related deaths and injuries (Borkenstein et al. 1964; Simpson et al. 2004; Blomberg et al. 2009) making these offenders a significant risk to the driving public and a priority for participation in alcohol interlock programs.

Second, to date it has been very challenging to ensure that offenders who are required to install an interlock device actually do so, and that they are subject to supervision. Essentially offenders have been able to avoid installing the device, even when mandated to do so, because of gaps in program implementation. As a consequence, offender participation in interlock programs is less than 20% in most jurisdictions and, of the 1.4 million drunk driving offenders that are arrested annually, only 180,000 offenders actually have an interlock installed. The passage of mandatory first offender interlock legislation can potentially compound this problem because the number of offenders subject to interlock supervision would dramatically increase without effective strategies in place to ensure that offenders install the device and are monitored as required by law.

This problem has occurred for a number of reasons including ineffective communication between agencies, a lack of training and education for practitioners, and insufficient resources. Not surprisingly, research shows that between 20% and 25% of those offenders who are formally ordered by the program authority to install the interlock device fail to do so (EMT Group 1990, DeYoung 2002), meaning that a not insignificant number of offenders are currently able to avoid interlock supervision and continue to place the public at risk. In particular, research suggests that repeat offenders are less likely to participate in alcohol interlock programs and install the device (Voas and Tippetts 1997).

In light of this challenge, it is most important to focus efforts on ensuring that devices are installed with this population because these offenders pose the greatest risk on the roads and also show the strongest reductions in recidivism when the devices are installed. Of greater concern, enabling a much larger population of offenders to fail to install the device will certainly erode intended deterrent effects.

Third, all offender programs would substantially increase the number of offenders in need of interlock supervision, requiring an increase in resources that may not produce benefits without assurances that interlocks will actually be installed. First offenders account for a majority of drunk driving offenders – i.e., the number of first offenders vastly outstrips the number of repeat impaired drivers. For example, in Illinois, it is estimated that the interlock offender population could potentially increase from 3,000 to 30,000 with first offender legislation. Hence, in order to support the participation of first offenders in alcohol interlock programs, these programs will require significantly more infrastructure, staffing and resources in

order to accommodate all drunk driving offenders. This poses a concern because the implementation of alcohol interlock programs has traditionally been an “unfunded mandate” and limited resources have been allocated to support implementation.

Finally, in most jurisdictions, first offenders are not subject to active monitoring by the criminal justice system. In court-based interlock programs this would result in a substantial gap in the ability of authorities to monitor first offender participation in alcohol interlock programs to ensure their participation and to follow up in response to violations.

It is clear that this debate regarding the use of alcohol interlocks for first offenders is complex and that both sides of the debate are based on compelling research and facts. On one hand, there are important benefits associated with the use of these devices with first offenders, and more importantly cost benefits; on the other hand the concerns associated with increasing the number of offenders that are subject to monitoring with this device without effective strategies and commensurate capacity to ensure that these offenders will in fact participate in the program are valid.

There is no question that agencies on both sides of this debate have a common goal in eradicating impaired driving. However, they propose different implementation strategies to best to achieve this goal. So the question is not whether first offender interlock laws should be implemented, but in fact how these laws can best be implemented and executed. Is it better to put legislation in place requiring all drunk driving offenders to install an alcohol interlock when there is currently little assurance that every offender will install the device and be actively monitored by program authorities and that intended cost-benefits will accrue? Or is it better to strengthen program structure and implementation and ensure adequate resources are allocated before widening the net to dramatically increase program participation? These are questions that jurisdictions will have to address as the movement towards mandatory first offender alcohol interlock programs grows.

It is likely that the answer will lie somewhere in the ability of jurisdictions to strike a balance between these competing interests. As such the purpose of this document is to provide useful information to help jurisdictions answer these questions and increase understanding of how to develop operational practices that can support legislation.

1.2 Alcohol Interlocks in Illinois

The State of Illinois provides an ideal opportunity to explore what is required to undertake and execute a transition from a repeat offender to an all offender interlock program. This case study examines what steps the State of Illinois took to implement a first offender program – beginning with the passage of first offender interlock legislation through the activities that were completed to prepare for the

date that the law took effect and the program became fully operational. In addition, a closer examination of the challenges that were encountered, and gaps in the process can provide much-needed insight to other jurisdictions that are considering or preparing for a full alcohol interlock program implementation that includes first offenders.

The purpose of this report is to demonstrate the process of translating legislation and policy into meaningful practices and procedures at an operational level. It contains a descriptive summary of the scope and breadth of activity that is required, as well as the length of time, resources and staffing needed to achieve this goal. The experiences of Illinois can be useful to guide decision-making, the planning process, and activities in other states that are considering expanding their interlock program to include first offenders.

In particular, this report describes the first offender implementation process in Illinois from the point that the law on alcohol ignition interlocks for first offenders was passed in 2007 until six months after the law had taken effect (mid-2009) in order to assess what worked well and what could have worked better with respect to translation of this new legislation into policies, regulations, and the outcomes that were achieved.

The results section of this report is organized according to the efforts of six separate committees that were formed to complete different categories of tasks associated with implementation. A description of the membership, goals, tasks and experiences, and timelines is provided in relation to each committee. Subsequent sections include a complete summary of the timelines associated with program implementation, a description of the resources that were involved in implementation, and a review of outcomes and post-implementation activities that are still pending. The experience in Illinois is also briefly compared to the experiences in other first offender interlock jurisdictions, including Colorado, Nebraska, New York and Washington. Finally, conclusions are drawn regarding what lessons have been learned from the implementation in these jurisdictions.

1.3 The Illinois Program

The first alcohol interlock program in Illinois began as a pilot project for repeat offenders in 1994 in an effort to reduce the high rates of impaired driving that the State was experiencing. In response to this problem, the Office of the Secretary of State (IL SOS) was given the responsibility of administering the program and was tasked with creating Administrative Rules for the Breath Alcohol Ignition Interlock Device (BAIID) program.

After four years, the Illinois General Assembly made the BAIID program permanent. This program targeted repeat offenders, specifically those individuals who had

two or more convictions for impaired driving. The BAIID program requires the offender to install an alcohol interlock on all vehicles that they drive and apply for a Restricted Driving Permit (RDP). Participation in the BAIID program is mandatory for reinstatement of the full driver's license and a failure to do so results in an indefinite suspension of the license.

In June 2007, legislation was passed in Illinois that extended the use of alcohol interlocks to drunk drivers who are first offenders. This program is not truly mandatory in that first offenders are able to opt out of the interlock program and serve a license suspension without having an interlock device installed. The program became effective on January 1, 2009. This legislation had the potential to create significant growth in the population of impaired driving offenders that participate in the alcohol interlock program in the State of Illinois, and increase the number of program participants from 3,000 to as many as 30,000 (assuming that all first offenders opted to participate). The implementation of the first offender program took approximately eighteen months from the passage of the legislation to the start of the program which was launched on January 1, 2009. Multiple divisions of the IL SOS and the Office of Highway Safety (Illinois Department of Transportation) were involved in the implementation process.

2.0 METHODOLOGY



A case study was undertaken to investigate the process that was used in Illinois to prepare for the implementation of a first offender alcohol interlock program. The purpose of this case study was to assess the breadth and scope of activities involved in the translation of first offender alcohol interlock legislation into Administrative Rules supported by operational practices and procedures, and whether or not the desired effectiveness was achieved. The goal of this work was to provide insight into the operational practices needed to support this change in legislation and also to provide guidance to other jurisdictions either considering or undertaking a first offender interlock program initiative.

Relevant materials used for or created during the implementation were collected and reviewed as part of the case study. Materials included legislation, regulations, committee documents, task lists, presentations, forms, letters, notices, press releases, meeting agendas, plans, calendars, invitations, progress reports, and work orders. The review of these materials was used as the foundation for a detailed overview of the implementation process in conjunction with a timeline/map (located in Section 4) of all relevant activities and milestones that took place from the time that preparations for the implementation of the law first began (June 2007) to when the law took effect (January 2009).

The detailed overview of the implementation and timeline provided structure and guidance for key informant interviews with Committee members and the program manager to further augment and expand these two documents. A Delphi panel was subsequently organized to collect additional input from key stakeholders (i.e., Secretary of State, IL Department of Transportation, traffic safety resources prosecutors, representatives of the criminal justice system) regarding their perspectives, experiences, and the challenges that they encountered with implementing the first offender elements of the program. The practical effects of the proposed “opt-out” provision of the Illinois law and its impact on the program and service providers was explored as part of this process.

The information gathered during the review of relevant materials, key informant interviews and the Delphi panel was then analyzed and synthesized to provide a comprehensive understanding of:

- > What tasks were completed as part of the implementation and how these tasks were relevant to and contributed to the overall success of the implementation; and,
- > What tasks were needed but not considered and/or completed and how these detracted from the success of the implementation.

The information collected was interpreted using a “system improvements” paradigm that was previously developed by TIRF (Robertson et al. 2008). A “system improvements” perspective underscores that, although legislation and regulation are necessary components of any strategy to combat alcohol impaired driving, by itself legislation and regulation are insufficient to guarantee success at a practical level. Beyond legislation and regulation, it is imperative that agencies have an understanding of the entire delivery system and their respective role within that system. A successful implementation strategy is based upon streamlined delivery of the countermeasure, communication and cooperation among various stakeholders, well-designed information exchange strategies, and accountability among agencies as well as offenders.

Additional follow up information was also gathered from key informants at several points throughout 2009 in order to gauge the impact of the implementation process and its outcomes in conjunction with any challenges that were experienced. Although not detailed in the timeline in section 4.0, this report also contains information about activities that have occurred in the first year that the law was in effect (January 2009-January 2010) and that are described in Section 7.

Finally, the experiences in Illinois were shared with key program staff in four other jurisdictions (CO, NE, NY and WA) as a basis to compare and contrast their respective experiences. Of some interest, these other states represent a range of interlock programs and include both administrative, court-based and hybrid programs. The nature and extent of the first offender law also varied. These comparisons are included to enhance understanding of the context, scope and breadth of activities that can be relevant to the implementation of a first offender program and illustrate the nature of the diverse effects that such a law can have on program implementation.

3.0 RESULTS: COMMITTEE WORK



The implementation of the first offender alcohol interlock program in Illinois required a variety of changes to the existing BAIID program in several key areas. To manage the workload, six committees were organized to identify and execute needed modifications to key aspects of the program. These include:

- > Revising the Administrative Rules to reflect the new legislation;
- > Developing new forms and letters;
- > Programming changes into the IL SOS driver record and interlock program database;
- > Delivering agency/staff training and education;
- > Raising public awareness; and,
- > Creating new program fees and indigent funding.

The results in this section are structured according to committee. A detailed description of each committee in terms of membership, goals, tasks, and timelines are provided below, along with a discussion of the experiences of each committee and the challenges that they faced during the course of implementation.

3.1 Committee to Revise Administrative Rules

3.1.1 Committee membership. There were eight people involved in this committee representing the SOS. The following SOS divisions were represented on the committee:

- > Administrative Hearings (responsible for revisions to Administrative Rules);
- > Driver Services (responsible for determining how rules would be translated to the driver record system);
- > Programs and Policies (responsible for determining how the program would be implemented across departments);
- > Executive Office (responsible for the management of agency operations); and,
- > General Counsel (responsible for drafting rules that were consistent with the legislation).

3.1.2 Committee goals. The main focus of this committee was to revise and enhance the existing Administrative Rules to include procedures for first offenders and to make and suggest needed modifications to the new law to close loopholes. The goals of this committee were twofold:

- > to put the details of the new law in rule form, keeping with the spirit of the law; and,
- > to recommend repairing, consolidating, adding, or deleting parts of the law that were incorrect or inconsistent.

3.1.3 Committee tasks. There were two tasks assigned to the Committee.

Main task. The main task of this committee was to translate the legislation that was passed into revised Administrative Rules for the alcohol interlock program. This included modifying the existing restricted judicial driving permit in the Administrative Rules to reflect the program changes and the addition of the new Monitoring Device Driving Permit (MDDP). The Committee had to make a number of strategic decisions relating to:

- > the creation of definitions for violations of the program requirements for first offenders;
- > determining the length of the monitoring period; and,
- > identifying the outcomes (consequences) associated with violations.

Secondary task. A secondary task involved the identification of inconsistencies and errors in the text of the law and to propose revisions.

Many of the new violations required for the first offender program were patterned after the existing violations and based on some consideration of what other states were doing. The most difficult and time-consuming element of the Administrative Rules involved matching the violations with the sanctions and clarifying the violations and appropriate sanctions for various behaviors. However, it was not difficult for the committee to reach consensus on the new violations or the sanctions that would be imposed for each behavior.

The task of making the Administrative Rules consistent with the new interlock law was the most challenging and time-consuming aspect of the implementation process. The committee found it difficult to reconcile the wording of the statute with existing operational practices in several areas and found it challenging to translate the law into Administrative Rules and operational practices that were still consistent with existing procedures. In a few areas of the program, there appeared to be some disconnect between the legislation and existing operational practices within the SOS. As such, it required more effort to work with the statute in its

original form to develop protocols that would also be consistent with operational practices. The statute did provide some policy guidance, however, other areas were not addressed and the committee members worked to resolve inconsistencies between policy and practice.

Some of the challenges that the committee encountered also related to resolving ambiguities in the new legislation. For example, in the legislation that passed, it stated that if someone had their MDDP cancelled for a specific list of reasons then they would only be eligible for a Restricted Driving Permit (RDP) with a BAIID and this condition would be in place for twice the length of the original suspension. The problem with this was that the law did not state that their suspension time was doubled and it also did not address what would happen if the person decided not to get an RDP. This left several questions unresolved such as: Would they still be suspended for twice the length of the original suspension? If they never got an RDP would they ever be eligible to get their license back? The legislation had to be cleaned up in the Spring of 2008 to clearly state that if the MDDP was cancelled, the offender would be re-suspended for twice the length of the original suspension or the length of any accumulated extensions (whichever is longer) and they would be eligible for an RDP with a BAIID during that time.

Another example of the challenges with converting the new law to Administrative Rules was that the law stated that if the offender 'violated' the MDDP program, the statutory summary suspension (SSS) was to be extended for three months and that there were no limits on the number of extensions. Due to the way in which the monitor reports are reviewed and evaluated, an offender could easily incur three violations in one day and six in one month. If this occurred, it is likely that offenders would soon realize that it was less risky to exit the MDDP program and drive illegally because multiple program extensions could require them to remain in the program indefinitely. As a consequence, the rule had to be amended to say that there would be a cap of two extensions per reporting period. The legislation also had to be amended to state that the IL SOS would cap the number of extensions.

Overall, the clean-up of the legislation was a relatively smooth process. There were several clean-ups of the original bill with the first (and largest) occurring in 2007 and a smaller one in 2008. Minor changes were made in 2009 and there is an expectation that more work will have to be done downstream based on recommendations from MADD, State Senators, or the IL SOS.

Aside from the actual rules themselves, the drafting process was challenging for another reason. Establishing these new rules required a shift in attitude and perspective of IL SOS staff towards the alcohol interlock program (historically, impaired drivers were always dealt with using a system of punishment (i.e., you don't follow the rules, we take your permit away). The primary goal of the new law

was to get offenders put on a BAID and to keep the device installed in the vehicle until they had practice at being a safe and sober driver. With the new law, attitudes were shifted towards “you don’t follow the rules, we keep you on the BAID even longer.” This shift in perspective was not necessarily easy for some people to adopt. It took many conversations for some staff to begin thinking with this new attitude.

The lack of an indigency provision in the new law was also a concern for this committee. There was dialogue regarding whether indigency should be included in the Administrative Rules and how this classification could be/would be determined. Ultimately, it was included in the rules and it was decided that the Courts should make any determination regarding indigency, although no specific parameters have been developed for making this determination. In most other jurisdictions that provide indigent funding, the criteria for this determination vary widely and in many instances it is left to the discretion of the Courts. However, this can be problematic if Courts apply the typical standard that is based on whether the offender can afford a defense attorney, which costs much more than an alcohol interlock. Also, if the determination is left to the Courts and stringent criteria are not developed, the program may experience an influx of indigent offenders. This was the case in New Mexico as their number of indigent offenders ballooned from 100 to 3,500. At present, some court circuits in Illinois have met and all judges in that circuit have agreed to use a certain criteria, however, in other circuits, individual judges have chosen to apply whatever criteria they see fit.

Since the official launch of the program, the SOS has continued to identify areas of the legislation that need to be revised. Once the program has been in operation long enough to process offenders through the program and allow them to exit, it will be possible to identify all of the needed changes and make revisions accordingly.

3.1.4 Committee timelines. Work on the Administrative Rules Committee began in October 2007 and continued for approximately nine months. For the first several months, weekly meetings were held while the bulk of the work was completed. In early 2008, meetings shifted to occur monthly and focused on reviewing progress and remaining tasks to finalize the rules. During this time, several iterations of the rules were produced. The second draft of the rules was completed in November, the ninth draft was completed by April 2008, and the twentieth draft was finalized in June. The Administrative Rules were filed July 1st, 2008 and approved in December 2008. It was noted that work continued on the rules into December right before it finally passed.

Following the completion of the Administrative Rules and the identification of needed changes to the legislation, changes to the law were sent to the Governor by June 23rd, 2008. The Legislative Clean-Up Committee identified inconsistencies in the law and then forwarded SOS recommendations for changes to their legislative

office, who then went through the legislative process to have them fixed. Once the changes passed through the Illinois Legislature, then it moved on to the Governor who had 60 days to make a decision on whether to sign or veto.

3.2 Committee to Develop New Forms and Letters

3.2.1 Committee membership. There were initially eleven people involved in this committee representing the SOS but out of these eleven, a core group of five individuals took on most of the work. The following SOS divisions were represented on the committee:

- > DUI Division of Driver Services Department (responsible for coordinating the forms sent from the department to offenders such as the notice order of statutory summary suspension, notice order of extension of statutory summary suspension, etc.);
- > Form Coordinator of Driver Services (responsible for putting out bids for the printing of forms and tracking of inventory);
- > Communications (responsible for the appearance and design of certain forms);
- > Information Technology Department (responsible for creating electronic forms and figuring out which forms could be eliminated/ re-designed to be electronic);
- > Administrative Hearings (AH) (shared the forms that they use for the RDP offenders); and,
- > General Counsel (responsible for making sure that the forms were correct and matched the content of the new law).

3.2.2 Committee goals. The main focus of this committee was to revise existing forms and to anticipate and develop new forms and letters to accommodate first offenders in the alcohol interlock program. The goals of this committee were threefold:

- > to modify existing forms to reflect program changes and to anticipate and develop the necessary additional forms for the new program;
- > to develop new letter responses to specific actions (e.g., failure to calibrate the device; request of explanation to program violations; need for supporting documentation regarding program violations); and,
- > to plan the flow of information through the program to account for the new changes.

3.2.3 Committee tasks. To identify all existing SOS forms that needed to be changed/updated due to the new law. These changes were implemented and new forms were printed. These include:

- > Forms for program participation
 - » New arrest form for law enforcement
 - » Monitoring Device Driving Permit court order form (to opt in or opt out)
 - » Terms and conditions of BAID program for first offenders
 - » MDDP application for BAID program
 - » MDDP license and accompanying letter (to explain license and that the device must be installed in 14 days)
 - » Employment exemption request

Form that requires an offender to provide the BAID Division with their employer's information (company name and address) in order to be exempt from installing a BAID device in an employer-owned, non-commercial vehicle that they use during the course of their employment.
 - » Employment verification form
 - » Replace or correct MDDP license form
 - » Indigency determination request
 - » Offender to request formal hearing to contest decision

Form that the offender must fill out and submit in order to request a formal review of their extension or dismissal from the program.
 - » Application to re-apply to the program
 - » Checklist to approve new BAID service provider

- > Letters to the offender to communicate information about the program
 - » Acceptance to BAID program
 - » Offender requirements letter with checklist, credit card sheet

Letter that lists all requirements that must be met prior to the issuance of the MDDP and a form on which the offender must fill out their credit card information to pay for the MDDP monitoring fees.
 - » Warning letter for failure to install the device
 - » Letter to request an explanation for a program violation
 - » Letter to request supporting documentation in regards to an explanation of a specific violation
 - » Warning letter regarding the failure to calibrate the device

Letter sent to the offender warning them that they have a certain number of days in which to visit their service provider to have the alcohol interlock calibrated.

- » Offender notified of their extension in BAID program and right to contest
- » Advising that SOS accept/reject explanation for violation
- » Warning letters (e.g., get download, get installed)
- » Letter explaining to offender why MDDP was cancelled and their right to contest
- » Letter to prosecuting attorney following three extensions; second letter after four extensions
- » Letter to offender following three extensions; a second letter after four extensions

> Notices

- » Notice of statutory summary suspension
Confirmation sent to offender informing them that their driver's license, driving permit, and/or privilege to operate a vehicle or obtain a driver's license in Illinois has been suspended effective the date shown on the notice.
- » Notice of statutory summary suspension extension
- » Notice sent to the offender stating that their summary suspension has been extended as a result of program violations.
- » Driver Services notice to offender upon receiving sworn report (with insert provided by Administrative Hearings)
- » Notice of reasons for cancellation of MDDP
- » All brochures that reference permits

3.2.4 Committee timelines. The meetings of the committee were held bi-monthly during a one-year period beginning in June 2007. Most of the forms were completed by July 30th, 2008, although work on the forms continued into January 2009.

3.3 Committee to Program the Database

3.3.1 Committee membership. There were 15 people involved in this committee representing the Secretary of State (SOS). The following SOS divisions were represented on the committee:

- > DUI Division of Driver Services (were present as advisors on what needed to be removed from the driving record program and what needed to be changed);

- > Driver services programmers (were responsible for the driving record program and had to figure out all the changes that needed to happen to the program to make it compatible with the new law; they also wrote the PIR (Protocol Initialization Request – work order), made changes to the program, tested those changes, and finalized them);
- > IT project manager (acted as a project manager on the BAIID database system to keep the programmers on task);
- > IT programmers (created the new BAIID database and monitor report system that would interface with the driver record system);
- > General Counsel (responsible for making sure that everything was compatible with the new laws); and,
- > Administrative Hearings (advised the committee on how they processed and issued permits; it was decided that the BAIID division and not AH would be processing and issuing the MDDP permits).

There was also ongoing communication with the interlock vendors to ensure that their respective data management systems would be able to communicate with the SOS data system.

3.3.2 Committee goals. The main focus of this committee was to develop and implement the necessary changes to the SOS driver records system and functions associated with the BAIID computer program to accommodate first offenders. The goals of this committee were twofold:

- > to ensure that the new BAIID computer program was able to handle the multiple requirements associated with the interlock program; and,
- > to ensure that the existing driver records program was upgraded/ updated to manage the new requirements resulting from the interlock program.

Once it was formed, this committee was divided into two smaller groups in order to handle the two main work efforts. One subcommittee was responsible for developing and managing the creation of a new BAIID computer program; the other subcommittee managed changes to the Driver Record computer program so that the two systems could communicate.

3.3.3 Committee tasks. This committee was divided into two separate groups with different tasks. The first subcommittee was responsible for managing the changes needed to the driver record computer program. This first subcommittee ultimately completed a work order (PIR) of changes that is several hundred pages long that mainly involved technical changes. An important aspect of the tasks of this group also included providing service providers, courts, and other agencies with restricted access to the system for information purposes.

Most of the tasks of the first subcommittee had to do with bringing the driving record program up to par with the new law. For instance, the system (prior to the implementation of the MDDP legislation) recognized that if a DUI was loaded on the record, the individual had to be suspended for either three months or six months. This needed to be changed. Some of the major tasks that had to be accomplished included:

- > Change the driver record program so that when a DUI ticket is entered on a record, the record automatically reflects the new length of suspension (six months or twelve months).
- > Create and program codes for the new permit.
- > Create and program codes for MDDP violations.
- > Program so that when the BAIID Database enters a violation, it automatically talks to the driving record program and extends the suspension for three months.
- > Create a code for the three month extension on the driving record.
- > Write the explanation/description of each violation.
- > Program the driving record to automatically cancel the MDDP if certain convictions hit the record (i.e., conviction for a new DUI). The program will then automatically extend the person's SSS for twice the length of the original suspension or the length of extensions (whichever is longer).

The second subcommittee was responsible for managing the writing of the new BAIID computer program (that would review the interlock data and generate the appropriate letters and forms) and enabling it to interface with the driver record program. They had to accomplish the following:

- > Write a new program to read the interlock monitor reports and generate specific letters based on which violation(s) were identified. It also included creating a readable record of the violation times for the offender to refer to when he/she receives the letter which would allow them to respond to the reason the violation occurred.
- > Create a database that would distinguish between RDP BAIID offenders and MDDP BAIID offenders and generate violations, length of permits, etc. based on which type of permit the offender has.
- > The program needed to have a fourteen day clock which starts when the permit is issued. If no installation of a BAIID device occurred by day fourteen, a letter is automatically generated giving the offender a ten day warning to install. If an installation still does not occur, the MDDP is automatically cancelled.

3.3.4 Committee timelines. The committee met weekly beginning in September 2007 and eventually moved to monthly meetings. The driver records program was written and ready to test by December 1st, 2007, as was the BAIID program. The Project Initialization Request (PIR) — essentially a work order for the IT Department to do all of the programming changes — was completed by July 1st, 2008. The new BAIID/AH system was reworked and completed by July 1st, 2008.

3.4 Committee on Agency/Staff Training and Education

3.4.1 Committee membership. There were nine people involved in this committee representing the SOS. The following SOS divisions were represented on the committee:

- > Programs and Policies Division (responsible for being in contact with the Secretary of Administration and to make sure that the decisions and plans were directly in line with what the Secretary would want and to offer input from the Secretary's perspective);
- > Deputy Press Secretary (responsible for planning media events, writing press releases, coordinating press interviews, and putting together an education strategy); and,
- > Office of Highway Safety – Illinois Department of Transportation (helped with the educational efforts, with the BAIID Symposium and press events).

In addition, a wide variety of agencies were contacted in order to coordinate the delivery of training and education to the many practitioners who would be affected by the first offender implementation. These included:

- > State Attorneys offices;
- > State and local law enforcement agencies;
- > Judges;
- > Circuit court clerks; and,
- > Defense bar.

3.4.2 Committee goals. The main focus of this committee was to educate relevant agencies about changes to BAIID program and its implications for each agency. Its goals were twofold:

- > to provide initial training to agency staff regarding the creation and use of new forms, the application of new offenses and penalties, changes to the processing of offenders and new staff responsibilities; and,
- > to provide information about alcohol interlock technology.

3.4.3 Committee tasks. This committee performed a wide range of activities.

- > To create a statewide symposium to deliver education and training to a broad range of practitioners and to generate interest in the program.
- > To deliver general education and training about changes to the BAIID program and the implications of these changes for different agencies.
- > To create educational materials that are geared towards each of the professional groups (e.g., police, prosecutors, judges, treatment, etc.).
- > To respond to inquiries from agencies about the program.
- > To provide agencies with new forms and templates in support of the program.

The planning for the statewide symposium began in April 2008 and was managed by a three-person committee. The symposium on alcohol interlocks was held in October 2008 to deliver information about the new BAIID program. Approximately 300 people attended this three-day event, including law enforcement, prosecutors, judges, BAIID providers, and agency staff. Overall, it was deemed a success and generated interest in the program.

In terms of educational materials, the committee produced several videos that were accessible online at the SOS website and a three-page primer that was widely distributed. It took the committee several hours to develop the print materials. Efforts were made to reach out to the defense bar to provide education about the program. The defense bar did not appear to be very engaged in this effort and while some participated in the state training, it appears that this group was more interested in conducting their own educational initiatives.

With regard to the fielding of inquiries about the program, hundreds of calls were answered. The inquiries began in January 2008 and came from judges, state's attorneys, prosecutors, police officers, probation officers, and other practitioners. Thousands of calls have also been fielded from DUI offenders beginning in December 2008. In 2009, the IL SOS received its highest volume of calls from offenders.

All of the new forms and templates were delivered to relevant agencies via mail.

3.4.4 Committee timelines. This committee met periodically over an eighteen month span from June 2007 to December 2008. It took a three-person committee approximately six months to plan and organize the symposium. It was initially planned to hold the symposium earlier in the year, however it was not feasible. In hindsight, it did work out well that the symposium was not delivered until October just before the law went into effect so the training was fresh in everyone's mind.

3.5 Committee on Public Awareness and Education

3.5.1 Committee membership. There were originally nine people involved in this committee representing the SOS, but a core group of five took on most of the work. The following SOS divisions were represented on the committee:

- > Driver Programs and Policies (responsible for being in contact with the Secretary of Administration and to make sure that the decisions and plans were directly in line with what the Secretary would want and to offer input from the Secretary's perspective); and,
- > Deputy Press Secretary (responsible for planning media events, writing press releases, coordinating press interviews, and putting together an education strategy).

A number of other agencies were engaged as part of press events. These agencies included:

- > MADD;
- > Law enforcement agencies;
- > Liquor control commission;
- > Secretary of State Police;
- > Illinois State Police;
- > Illinois Department of Transportation; and,
- > National Highway Traffic Safety Administration (NHTSA) representatives.

3.5.2 Committee goals. The main focus of this committee was to develop and deliver educational initiatives and materials to the public regarding the changes to the BAIID program, the new requirements for eligibility, and the new consequences of an impaired driving conviction. This was achieved through the use of press events, media interviews, and meetings with community and advocacy organizations.

3.5.3 Committee tasks. Public education was delivered using a comprehensive strategy.

- > There was a Town Hall meeting held in July 2008 in which information about this initiative was provided and input was solicited.
- > Multiple press conferences were held across the state involving SOS, MADD and law enforcement to educate the public about the new law, program, and requirements. Three press releases were also created.

- > SOS publications that referred to the BAIID program were updated (e.g., *The Sober Truth*, *DUI Fact Book*, *Rules of the Road*, and the website).
- > New ads/brochures about the BAIID program were developed.
- > A new section was added to the SOS website to explain the BAIID program (<http://www.cyberdriveillinois.com>).
- > There was also a law enforcement symposium that was organized to educate a wide range of police agencies.
- > IDOT also provided a fair bit of publicity for the new BAIID program in late 2008 to raise awareness about the launch of the program.

The Town Hall meeting was an initiative of the IL Department of Transportation, Division of Traffic Safety. The BAIID Program Manager did a presentation on BAIID and the new MDDP program at the meeting. A wet lab (demonstration of how the interlock device works) and media event also took place there.

The SOS publications are produced annually and are available electronically through the SOS website and in print. *The DUI Fact Book* was updated and distributed to advocacy groups, reporters, attorneys, and to other people who requested materials. Various pamphlets were distributed by the SOS Speakers Bureau at a wide variety of events throughout the state from July 2008 and into 2009. *The Rules of the Road* mentioned the new interlock program and was distributed at driver licensing facilities and to new drivers. Information was provided at a wide variety of traffic safety venues throughout the state and at a booth at the Illinois State Fair. There was also a press conference at the statewide fair in Chicago and the information was passed out to TV, radio, and newspaper reporters. Efforts were also made to advertise the program at traffic safety and other community events throughout the State. Finally, IDOT organized a press conference held around the December drunk driving mobilization that focused on the new interlock program.

There was not as much effort directed towards program advertising through print media and the use of billboards because there was not a need or the resources to do so. Educational efforts were kept to more cost-effective strategies such as press conferences and media interviews.

3.5.4 Committee timelines. This committee met monthly throughout an 18-month period from June 2007 to December 2008. The publications were completed by October 1st, 2008. Website changes were made at various times throughout the planning process with the bulk of them being completed by January 2009.

3.6 Committee on Fees and Indigent Funding

3.6.1 Committee membership. There were seven people involved in this committee representing the SOS. The following SOS divisions were represented on the committee:

- > Budget and Fiscal Division (asked for an appropriation for the funds from the legislature; the Purchasing Unit was brought in to determine how the BAID providers would be paid out of the indigent fund);
- > Accounting/revenue (were made aware of how the funds were going to be spent and dealt with the receipt of the money to make sure it was deposited into the correct fund);
- > Driver Programs and Policies (consulted due to their involvement in the BAID program); and,
- > Administrative Hearings (consulted to determine the expected impact on their budget).

3.6.2 Committee goals. The main focus of this committee was to anticipate and prepare for the financial impact of the new BAID program. While there was not any indigent funding under the existing interlock program for repeat offenders, it was proposed for the first offender program. There was initially money allocated in the budget for the indigent fund, but it was removed before the budget passed for economic reasons.

3.6.3 Committee tasks. To set up two separate funds for the indigent program; one fund to receive monies and one fund to pay out monies.

- > To assess the financial impact of the new BAID program.
- > To assist with initial budget planning for the BAID program.
- > To meet with A/R and purchasing to determine if it was preferable to use a contract with vendors or to write the requirements into the Administrative Rules.

In assessing the financial impact of the new program, fiscal notes that estimated likely increases in program costs due to first offenders were prepared. The most significant fiscal note was related to the costs associated with an increase in administrative hearings and appeals. This note involved an estimate of how many offenders could potentially participate in the program, how many violations may occur, and how many of these violations would be challenged and result in a hearing and/or an appeal. These estimated number of hearings included both those for contesting violations and those for appeals. On average, before implementation there were some 14,000 hearings scheduled and 10,000 hearings held in conjunction with the BAID program. It was estimated that approximately 35% of

the estimated annual 42,000 offenders would be eligible for the interlock (or some 14,500 additional hearings). This resulted in a fiscal note of \$1.4-\$1.5 million to manage first offender hearings that was initially proposed but was later withdrawn as it was determined that these funds would not be needed at the outset of the program.

The Budgets Office was responsible for putting together a cost estimate for the indigent fund and then determining whether or not the money received was adequate. Five hundred thousand dollars was initially set aside for the indigent fund in 2009 and the same amount was to be set aside for 2010, however it was later determined that these funds were not going to be needed as other strategies to support indigent funding were being pursued.

One issue that was encountered was figuring out how to establish contracts with vendors for reimbursement (paying them from the indigent fund to cover the costs of installation and monitoring). Currently, the vendors bill the SOS quarterly for the installation and monthly for the rental/calibration fees for all indigent offenders. If there is not enough money in the fund to pay the vendors what they bill, they must be paid on a pro-rata basis and that is considered "payment in full."

There was also some concern associated with how judges determine indigency and that discrepancies in decision-making may result in judge shopping (e.g., having the case transferred to a Court with a judge that is likely to be more sympathetic in determining indigency). There was concern that because there are no strict guidelines for determining indigency, the program may receive an influx of offenders declared indigent and would lack the funds to accommodate for them. For fiscal purposes, it was estimated that the program would be able to support between 5-10% of offenders. A level of indigent offenders in excess of 10% would be a financial drain. In order to address this potential problem, the legislation includes a requirement that stipulates that the indigent fund be re-examined annually and that there can be a readjustment of fees if it is found that the fund cannot accommodate the number of offenders. At present, the indigency rate is holding at approximately 9-10% and it must remain at 5% in order to be fully funded.

3.6.4 Committee timelines. This committee met approximately ten times over two years. Decision-making was completed by June 16th, 2008.

4.0 RESULTS: PROGRAM DEVELOPMENT TIMELINES



Administrative Rules Committee (15 months)

- > October 2007 – work of the Administrative Rules Committee begins
- > November 2007 – second draft of the rules was completed
- > April 2008 – ninth draft of the rules was completed
- > June 2008 – twentieth draft of the rules was completed
- > June 23rd, 2008 – changes to the legislation were sent to the Governor
- > July 1, 2008 – Administrative Rules were filed
- > December 2008 – Administrative Rules were approved

Develop New Forms and Letters Committee (20 months)

- > June 2007 – committee begins meeting and starting to update forms
- > July 30th 2008 – most of the forms/letters were finalized
- > January 2009 – all forms/letters were finalized

Database Programming Committee (11 months)

- > September 2007 – committee begins meeting weekly and then moves to monthly meetings
- > December 1st, 2007 – driver records program was written and ready to be tested
- > July 1st, 2008 – Project Initialization Request (PIR) was completed
- > July 1st, 2008 – the new BAID/AH system was re-worked and completed

Agency Staff Training and Education Committee (19 months)

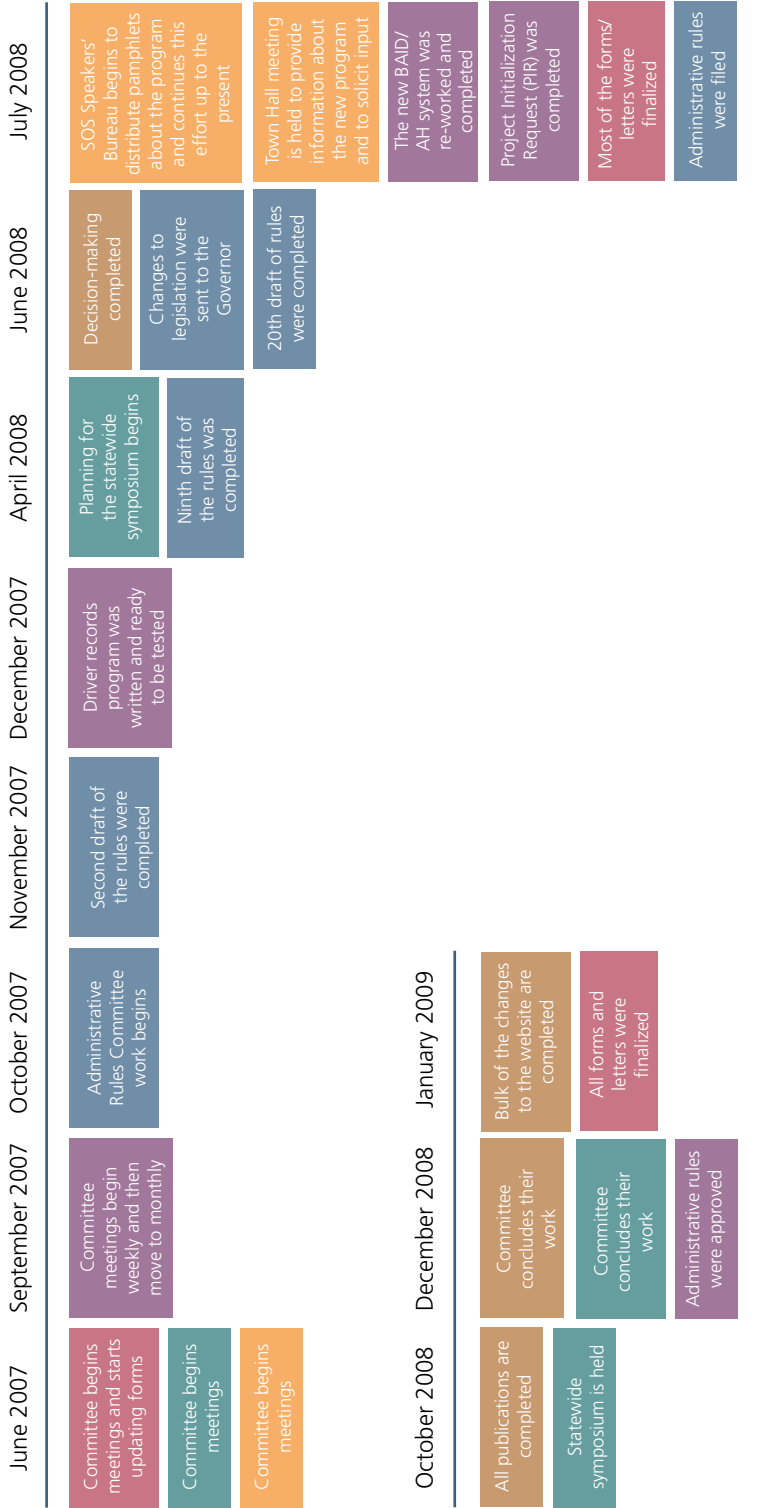
- > June 2007 – committee begins meeting
- > April 2008 – planning for the statewide symposium begins
- > October 2008 – statewide symposium is held
- > December 2008 – committee concludes their work

Public Awareness and Education Committee (16 months)

- > June 2007 – committee begins meeting
- > July 2008 – Town Hall meeting is held to provide information about the new program and to solicit input
- > July 2008 – SOS Speakers' Bureau begins to distribute pamphlets about the new program and continues this effort into 2009
- > October 1st, 2008 – all publications are completed
- > December 2008 – committee concludes their work
- > January 2009 – the bulk of the changes to the website are completed

Fees and Indigent Funding Committee (9 months)

- > October 2007 – committee begins meeting
- > June 16th, 2008 – decision-making is completed



- = Administrative committee
- = Forms committee
- = Database committee
- = Training committee
- = Public committee
- = Fees committee

5.0 RESULTS: RESOURCES



As was noted earlier in the report, adequate resources are essential to facilitate a smooth implementation process. The following is a breakdown on the staff resources, equipment resources, and financial resources that were needed/used leading up to the implementation of the first offender program.

5.1 Staff Resources

- > More than 40 people were involved in the committees (over a two year period).
- > The individuals involved in the implementation process at SOS included: Chief of Staff, Deputy Chief of Staff, Director of Budget, Program Analyst, Administrator of BAIID Division, Deputy Director of Administrative Hearings, Director of Support Staff of Administrative Hearings, Legal Counsel, Computer Programmers (3), Personnel Liaison, Director of Personnel, Personnel staff (3), Administrative Hearing Staff (1).
- > The BAIID Program Manager spent about 90% of her time from June 2007- January 2009 working on the implementation.
- > The Legal Advisor estimates that she spent 20% of her time from March 2007 to January 2009 doing legislative clean-up work.
- > For the creation of the new forms and letters, the BAIID Program Manager estimates that she spent 25% of her time; the Manager of the DUI Section for Driver Services estimates that she spend 15% of her time; the Contractual Programmer estimates that he spent 25% of his time; the Legal Advisor estimates that she spent 2% of her time; and the Creative Director estimates that she spent 1% of her time.
- > The Policy and Program Analyst estimates that he spent 10-15% of his time on the implementation over a nine-month period on public awareness and education efforts and Administrative Rules issues.
- > The Deputy Director estimates that he spent 20% of his time on implementation-related tasks.
- > The Alcohol Program Coordinator at IDOT estimates that he spent about 40% of his time over a one-year period to organize the symposium and make changes to the IDOT website and training materials.

- > The Budget Analyst estimates that she spent only 1% of her time over the course of a year working on the fees and indigent funding committee.
- > The Traffic Safety Resource Prosecutor (TSRP) estimates that she spent approximately a few hours a week on the interlock program for a period of approximately nine months to one year. The other TSRP in the State spent less time than this on the implementation.
- > SOS staff for the BAID program increased from three people to seven people to manage implementation. Programmers were hired in the fall of 2007 and BAID staff was added in January 2008 with the last new hire occurring in March 2009. More new hires will likely be needed in the future.
- > Two full-time programmers were hired to manage the database programming.
- > Six staff persons have been added to SOS to respond to questions about the program and to deliver training to relevant agencies.
- > All participants in the committees felt that they had both adequate time and resources made available to them leading up to implementation.

5.2 Equipment Resources

- > Additional office space for new staff (the area that they previously had expanded by two persons);
- > Computer and phone set up costs;
- > Office supplies (e.g., mail out of letters and materials to offenders);
- > Printing and distribution of new MDDP and new forms; and,
- > Other costs included equipment (file cabinets, computers, electronic file cabinet, computer storage disc, phones, desks, chairs, printers, shredders, paper, file folders).

5.3 Financial Resources

- > It is estimated that the total cost of the implementation of the first offender alcohol interlock program in the State of Illinois was slightly more than \$1.24 million (USD). This estimate includes a variety of costs including salaries, direct costs, and related costs such as retirement and group insurance costs.
- > Not all of these costs were paid by the Secretary of State, the lead agency responsible for the first offender alcohol interlock implementation. Costs were also supported by IDOT and the Office of Highway Safety. The costs of the two COBOL programmers who worked on the database are also included in these costs.

- > As part of these costs, the Highway Safety Office provided a \$25,000 grant to support the costs of the interlock symposium.
- > The Highway Safety Office also provided \$300,000 in Federal highway dollars in order to support additional staff for the SOS to support staff travel to deliver training and education across the State. It is estimated that 66% of this grant from IDOT went toward paying staff salaries and social security.

6.0 RESULTS: OUTCOMES



Overall, it is believed that the implementation went very well. The SOS (particularly senior staff), was fully supportive of the new program and provided appropriate resources and timelines which facilitated a smooth implementation process. As a result of this clear guidance and support from senior officials, agencies were generally well-prepared for the implementation of the legislation and had adequate time to accomplish all of their assigned tasks. There was also a strong feeling of teamwork, coordination, and communication across agencies. Everything operated as expected and within ten days applications for the program began to come in.

The roles and responsibilities of different practitioners within the process were clearly delineated. Again, this was a function of careful planning at senior levels, strong leadership and effective communication between agencies and practitioners. Of course, some practitioners paid more attention to the new program information than others which is a common challenge in most jurisdictions. Judges were probably the most hesitant group to work with although many were receptive to the program and had questions about their new role in relation to the MDDP. There was a good turnout at the BAIID Symposium but those in attendance were mainly law enforcement. It was more challenging to convince judges in particular to attend this event or to participate in the training sessions that were offered, perhaps due to concerns about impartiality. The public was generally receptive to and in support of the implementation. The only pushback expressed through the media was related to the costs of the program, which is not unusual. There was however, some negative commentary in the press from the defense bar citing concerns about the impact of the program on their clients.

With regard to the technical aspects of the new program, there have been little to no computer issues associated with the new program and everything appears to be working smoothly to date. Issues are addressed as they arise but as of the time of this report, no major challenges have been encountered.

In retrospect, most agencies agreed that more time should have been spent on the wording and content of the legislation prior to implementation. This would have streamlined efforts to develop the Administrative Rules which proved to be the most challenging and time-consuming part of the implementation process. There was a fair bit of revision to the finer details of the legislation that was required post-implementation, however most of it related to minor inconsistencies.

7.0 POST-IMPLEMENTATION ACTIVITIES



At the conclusion of this review in early 2010, the program in Illinois has been operational for approximately one year. Once offenders began to be processed through the program, some loopholes in the legislation were identified that will have to be addressed in the next legislative session (e.g., What happens when an offender gets convicted of DUI before the Statutory Summary Suspension (SSS) expires). It is believed that once offenders begin moving through the hearing process that other areas of the statute/Rule that require adjustment will be identified. Those practitioners that were involved in the implementation process will continue to meet to monitor the implementation, identify issues that need to be resolved, and make adjustments accordingly.

The training and education of criminal justice professionals has continued on an as-needed basis as interest in the program grows and new practitioners are engaged in the use of alcohol interlocks. It is expected that ongoing training and education will be required periodically as the program evolves and more individuals are impacted by it.

One year after the official launch of the Illinois program, just 6,500 of an estimated 30,000 first time drunk drivers have enrolled in the program. This has occurred because the Illinois program is not mandatory — first offenders can choose not to participate. The SOS in Illinois is carefully tracking this issue and opportunities to strengthen the program and make it truly mandatory are being considered for the next legislative session.

The use of an indigency provision that enables offenders who are not able to afford the interlock program to participate in it continues to be a topic of discussion in Illinois. This was an issue that was of concern in Illinois prior to implementation, as it is in most jurisdictions. It has been challenging for jurisdictions to determine an appropriate strategy to guide decision-making and determine whether offenders are truly indigent. To date, many jurisdictions have relied upon a single measure (e.g., judicial determination, Federal poverty guidelines, qualification for food stamps) as opposed to multiple measures that can provide a more complete financial picture (e.g., as is the case in South Carolina and New York).

At this time, in Illinois indigency is a judicial determination, however, the basis for these decisions can vary widely. Often the standard criteria for indigency is whether the offender can afford a public defender, however, an interlock device

is much less expensive than a defender, creating some confusion among judges. As a consequence, the percentage of offenders that can be supported by the fund must be closely monitored to ensure it remains stable and there are sufficient funds available.

Other proposed changes to the program that are being considered include opportunities to build in positive reinforcements for offenders to encourage good behavior and compliance. In particular, the SOS is examining the possibility of incorporating letters to offenders that acknowledge their compliance with the interlock program requirements and encouraging continued efforts in the future. This has the potential to enhance the program as research shows that reinforcing good behavior can have positive effects (Crime and Justice Institute 2004).

Opportunities for a process and impact evaluation of the first offender interlock program in Illinois are also being considered for the future. There is a strong desire to fully evaluate the program and employ several different measures to gauge overall effectiveness in a number of areas. The importance of pursuing the evaluation of such programs cannot be over-emphasized. Evaluation enables jurisdictions to determine whether the program is meeting its intended goals and the impact it is having on the target population. More importantly, an evaluation can enable jurisdictions to measure the costs and benefits associated with the program to justify the allocation of resources needed to continue the program.

8.0 EXPERIENCES IN OTHER STATES



In order to provide context for Illinois' experience with the implementation of a first offender alcohol interlock law, information about the implementation process was gathered from four additional states² (Colorado, Nebraska, New York and Washington). These states were selected because they represent the diversity that exists in interlock programs across the U.S. and include both administrative and court-based programs that have been operation for a reasonable period of time. They also represent a range of available time and resources to prepare for implementation.

A summary of the experiences in each of these four states is provided below. Information pertaining to the pre-existing program for repeat offenders, the elements of the new first offender law, the implementation process, resources that were allocated to support implementation, key successes and challenges, and current participation in the first offender program are included. In addition, based on their own experiences, each state presents some suggestions can provide insight to assist other states that are considering the implementation of a first offender law.

Colorado's First Offender Experience

Legislation

Prior to the implementation of the first offender alcohol interlock law, Colorado had a pre-existing, administrative interlock program for offenders convicted of a second or subsequent impaired driving offense. This program required that offenders must have an alcohol interlock installed in their vehicle and hold a restricted license for at least one year prior to full license reinstatement.

Colorado's first offender interlock law took effect January 1, 2009 and prescribed harsher penalties for first offenders. Subsequently, those administratively revoked at a 0.08% BAC or convicted of their first driving under the influence offense are now subject to the following conditions:

- > **nine month license revocation period (previously three months);**

² Arizona and New Mexico were also invited to submit a summary of their experiences with the implementation of a first offender interlock program, however due to timing and competing priorities it was not possible to receive a summary prior to the printing of this report.

- > may receive an interlock restricted license after a one month revocation period with the installation of an interlock; and,
- > if the BAC was 0.17% or greater the interlock will be required for a period of at least two years.

Colorado Revised Statutes: 42-2-125(2.3) & (2.4), 42-2-132.5 and 42-4-1301(9)(g) (III)

Implementation Process

Colorado's experience implementing their first offender program was very comparable to the implementation in Illinois. As a state with an administrative alcohol interlock program, the implementation was largely led by the DMV. Teams or committees of individuals were assigned to complete the various tasks involved in making the program operational. These tasks included: creating new forms and modifying existing forms; increasing staff for the increased volume of offenders seeking license reinstatement; and programming the mainframe computer system to reflect legislative changes (e.g., changing the revocation period for first offenders, implementing a new interlock eligibility function, instituting a letter for early removal for compliant participants, etc.).

In general, the expansion of Colorado's existing program to include first offenders fit well within the existing statutory and regulatory framework previously established for their repeat offender program. In large measure, this was because, prior to the passage of the first offender interlock law, Colorado's proposed legislation was vetted through the Interagency Task Force on Drunk Driving (established by the Colorado General Assembly in 2006 in an effort to generate more collaboration and consensus for effective solutions to the impaired driving problem) before being introduced in the legislature. As a key player on the Task Force, the DMV was able to ensure that the wording of the legislation was consistent with existing practices and could be implemented with relative ease into the existing interlock program. This was a particularly important step to ensure successful and timely IT programming and program expansion.

However, there were some aspects of the existing regulatory scheme that required additional attention to properly implement the law. These elements pertained to compliance reporting and the provision of indigent funds to offenders of low socioeconomic status.

The bill passed in the Spring of 2008 and became law in September 2008, effecting offenses committed on or after January 1, 2009. The issue of indigent funding is slowly being resolved and is expected to be available in May 2010.

The time that was available to Colorado to prepare for the implementation of the law was believed to be sufficient, in particular because much of the work was

completed prior to the passage of the law. Staff in the State reported they were well able to make the necessary changes to the mainframe computer program, create new forms and documents and to hire and train new program staff prior to the new program becoming operational. Although much less time to prepare was available in Colorado as compared to Illinois, the new legislation was very consistent with the framework already established for the repeat offender program, which likely greatly facilitated the expansion of the program to include first offenders.

Resources

The involvement of members of the Task Force³ with the implementation was extensive and a total of 20 representatives participated in the teams. A core group of six individuals were particularly active as they were responsible for working through the details of the legislation and the implementation plan prior to the introduction of the bill. This advance effort to prepare the legislation was beneficial. During the legislative process, each of the agencies involved in the implementation had the advantage of knowing that support for the bill had already been acquired and that the Governor would sign it into law. Thus, concrete implementation plans were actually initiated early on in the process.

All the costs associated with the work prior to the passage of the law were absorbed by the participating agencies as part of on-going business. Post-passage costs were allocated through appropriations with the bill and an indigent cash fund was created from increased license reinstatement fees. Hard costs of implementation, including increasing the number of staff and the development of the internet application totaled approximately \$900,000.

Successes and Challenges

The implementation in Colorado occurred in a relatively smooth fashion and was viewed as a major success. A key factor in this success was the dialogue and close work between both the bill's sponsor and the bill's drafter prior to its introduction in the State legislature. As a consequence, the bill was passed with virtually no additional amendments because both the administrative and criminal provisions were reconciled in advance and the legislation was designed to fit easily into the existing interlock framework. This ensured that many of the operational details were taken into account prior to implementation. In addition, it also decreased the

³**The Interagency Task Force on Drunk Driving is made up of the following members or their designees:** Executive Director of the Dept. of Transportation; Executive Director of the Dept. of Revenue; State Court Administrator; Chief of the Colorado State Police; State Public Defender; Director of the Division of Behavioral Health; Director of the Division of Probation Services. **There are also representatives from the following agencies:** Colorado Association of Chiefs of Police; County Sheriffs of Colorado; Organization of Victims of Impaired Driving; Colorado District Attorney's Council; Colorado Criminal Defense Bar; Alcohol Beverages Manufacturer; Colorado Licensed Beverage Association; Colorado Beer Distributors Association; and a college student as well as a victim or victim's family member.

number of challenges that agencies encountered and had to address once the law took effect.

The biggest challenge that Colorado has faced relates to the availability of indigent funding for the program. The first offender bill introduced the indigent provision and established a solid funding mechanism for the alcohol interlock program through increased license reinstatement fees, however, it included very broad language to define/identify indigent offenders. Of interest, the criteria used to define this category of offender has historically been inconsistent and problematic in those states with indigent funding for the interlock program, leading to either overuse or underuse of the funding.

The main issue with regard to the indigent fund was that the State was required to undertake a completely new contracting process with interlock vendors because the disbursement of State funds for the indigent program required new language. In doing so, a new process was instituted where a “per interlock vendor fee” was created. The result was that vendors were required to pay a certain amount of money back to the State to support a web-based interlock interface on the State internet portal. The interface would provide direct data links to DMV for new installations, monitoring, per diem accounting, and disbursements back to the vendors. This system is currently in the final test phase and is set to be deployed in May. DMV unfortunately, did not meet the implementation date mandated for implementation of the indigent funding portion of this system. This is largely attributed to an underestimation of the amount of time and effort that it would take to enter into new contracts with vendors and to build a system to manage the indigent funding.

During the initial fiscal analysis of the proposed legislation, there was some internal resistance regarding the development of an internet application. Consequently, an alternate funding source for this development had to be devised and a provision for this funding was included in the new contract with vendors. This slowed progress significantly. In hindsight, these concerns could have been anticipated and the problem solved by specifically providing for the internet application in the bill itself.

Program Participation

Prior to the first offender law coming into effect, Colorado had approximately 7,000 offenders participating in the alcohol interlock program which equaled a 45% participation rate of all eligible offenders. One year after the first offender program was implemented, the total of participants rose to approximately 10,000 offenders. At present, only 50% of the anticipated number of new interlock program participants are registered in the interlock program.

Recommendations

Based on Colorado's experience, recommendations for a successful implementation of first offender legislation are as follows:

- > Work closely with the legislative sponsors during the development of legislation;
- > Spend time on the front end of the legislative process to adequately prepare and ensure that the implementation is efficient and effective. This can be facilitated by making sure that the new legislation is compatible with existing legislation and that the language contained within the bill is clear and unambiguous;
- > Build a self-funded mechanism for the program into the implementation process; and,
- > Design a program that builds on the existing system (interlock program).

For years in Colorado there has been ongoing discussion and dialogue regarding the best approach for an alcohol interlock program – i.e., whether the interlock program should be part of the judicial system or part of the administrative license system. Based upon the experience of implementing first offender interlock legislation, and the lower than expected participation rate that was achieved with a solely administrative program, it is the belief of the State that the best approach to delivering an efficient and effective interlock program involves a hybrid strategy – i.e., including elements of both the judicial system and the administrative license system. An administrative system assures that the program will be uniformly applied throughout the state, and a judicial system brings the potential to permit the use of more severe penalties for non-compliance as needed.

Nebraska's First Offender Experience

Legislation

Nebraska has had an ignition interlock bill passed in the 2008, 2009, and 2010 sessions affecting the issuance of interlock permits and ignition interlock devices to those convicted of impaired driving. The ignition interlock device and permit are ordered by the courts. The bill in 2008 opened up the issuance of interlock permits to first offense impaired driving offenders while under revocation.

Since January 1, 2008, first offenders with a BAC of less than 0.15% will lose their driving privileges for a six month period after being convicted of impaired driving. Convictions for drivers with a BAC of 0.15% or more are revoked for one year. For first offenders under 0.15% BAC, the no driving period is reduced to one month if the offender also installs an interlock on their vehicle for the remaining five months of the six month license revocation. First offenders at 0.15% BAC or more must serve a 60 day no drive period before being able to drive with the interlock permit

and device (which will be in place for the balance of the one year revocation). The ignition interlock permits are ordered by the courts in Nebraska and are subject to driving restrictions. Offenders are only permitted to drive the vehicle to work, school, treatment (if applicable), and to the interlock service center. A commercial motor vehicle may not be operated with an ignition interlock permit.

With the most recent legislative changes, beginning on July 14, 2010, impaired driving offenders that are convicted of a second or subsequent offense are sentenced to a one year revocation or more must serve a minimum 45 day no driving period (hard suspension). After that, if the court has ordered an interlock, the offender may drive for limited purposes after having the device installed on his/her vehicle and obtaining an ignition interlock permit. The offender must keep the permit and device for the balance of the revocation period, however long.

Additional penalties for first offenders include:

- > Six month license revocation for a BAC under 0.15%;
- > One year license revocation for a BAC at or greater than 0.15%;
- > Jail time ranging from 7-60 days; and
- > \$400-500 fine.

Nebraska Revised Statutes: 60-498.02; 60-6,211.05; 60-6,197.01(2). 60-197.03 (1) and (2)

Implementation Process

The implementation of the first offender law in Nebraska was led and largely undertaken by the DMV, despite the fact that the interlock program is court-based. Unlike the state of Illinois, Nebraska did not form specific committees or allocate the work to multiple agencies. Instead, DMV managed and completed almost all of the workload related to the first offender implementation with Probation Administration and the Court Administrator's Office playing minor roles. For example, Probation was involved in the development of a program to enable indigent offenders to receive an interlock and the Court Administrator's Office worked to ensure that their computer systems could communicate with the DMV driver abstract system.

At DMV, personnel involved in the implementation process included Legal Counsel (and clerks), programmers, the Administrator from the division that handles abstracting, revocations, and reinstatements, the Driver and Vehicle Records Administrator, the Administrator of the division that oversees driver license examiners, as well as the Deputy Director and Director of the DMV. Additional support staff from each of these divisions was also utilized although the total number of DMV staff involved in the implementation is not known. Similar to

the situation in Illinois, no discussions among relevant agencies about a first offender program were held prior to the introduction of the legislation in 2008. This ultimately resulted in the need for a variety of changes to the law during its development and post-implementation.

Administrative rules and regulations for the first offender program were developed and drafted by the DMV, and a public hearing was subsequently held to discuss the rules and gather input. However, initial drafts of the rules/regulations were returned by the Attorney General for further changes. To date, the law has been amended twice and as a result, new rules/regulations are now being drafted to incorporate the content of the three legislative drafts as well as feedback from both the Attorney General and from the public hearing.

The effective date for the first offender program was January 1st, 2009. The 2008 bill enabled the DMV to issue a new driving permit with an interlock restriction to replace the previous Class O restricted driver's license. Although the DMV had originally anticipated that there was sufficient time to prepare for the incorporation of this new driving permit, this was not the case. Following a legal court challenge, a decision was made to issue the previous Class O restricted license to anyone arrested for impaired driving prior to January 1st, 2009 and to issue new interlock permits to those arrested after this date. This is why the 2009 bill provided that the law in effect on the date of arrest determined whether or not an offender was eligible for an interlock.

Both the 2008 and 2009 bills made additional categories of impaired driving offenders eligible for participation in the interlock program. The second version of the bill involved additional work for DMV in the area of programming for the driver information system.

The 2010 bill goes into effect 90 days after the end of the legislative session. The 2010 bill was introduced to assure compliance with federal ignition interlock requirements. DMV will have to undertake some additional programming to accommodate for the changes contained within the updated version of the first offender legislation.

Resources

The implementation of the first offender interlock program had a limited fiscal impact on DMV. However, funds had to be allocated to cover the cost of programming the database to accommodate the changes to the program. The 2008 bill contained a \$36,000 appropriation to DMV for programming and \$10,000 to the Supreme Court (Court Administrator's Office) but the rest of the development was done through existing funds.

In addition, discussions were held between DMV and the Probation Administration (the agency responsible for overseeing the state's indigent fund) regarding the development of an indigent fund. The Probation Administration incurred the costs associated with setting up the indigent process. Ultimately, very little money was appropriated to cover the cost of first offender implementation and most changes were made using existing resources.

Successes and Challenges

The implementation of Nebraska's first offender interlock program was aided by the fact that the DMV had already developed an effective process to track interlock licenses ordered by the courts and to notify offenders and probation staff of these orders. Nebraska was able to successfully build on this existing system when the legislation expanded eligibility for the interlock program to first offenders.

The most significant challenge in Nebraska stemmed from change from a restricted drivers license (drivers were reinstated to a regular license with an interlock requirement – i.e., the person could drive anywhere so long as the car was equipped with an interlock device) to an interlock permit which only allowed driving for certain purposes. A second challenge that resulted from the original 2008 legislation was the issue of applicability. The bill failed to identify when a person qualified for the new interlock permit as opposed to the old Class O license with interlock restriction. The 2009 legislation resolved this issue by stating that the law that applied was the law in effect on the date of arrest (therefore, only individuals arrested after January 1, 2009 were eligible for the new interlock permit). Persons with interlock permits now remain under revocation on the Problem Driver Pointer System.

In hindsight, the implementation process could have been greatly facilitated if the legislature had conducted an interim study before the original legislation was enacted in 2008 or since the implementation. This would have permitted the early identification of these issues and allowed them to be addressed. It would have also been easier if there were no complications created by federal compliance issues. These two factors resulted in the need for a clean-up bill in the 2010 legislative session. During this session, Nebraska was required to remove meetings with probation officers as a permissible driving purpose for an interlock permit.

Program Participation

In Nebraska, offenders are only eligible to receive an alcohol interlock with a court order issued in a criminal impaired driving case. The only other offenders who can have an interlock are those who have applied for pardons following a 15-year revocation for a DUI. The Board of Pardons will order an interlock after granting a reprieve from the license revocation after the person has served at least seven years of the 15-year revocation and meets other requirements of the law. Interlock

permits ordered by the Pardons Board do not restrict the driving use, except that they cannot be used for operation of commercial motor vehicles.

In 2008, 650 interlock licenses were issued pursuant to court orders (this represents a small percentage of offenders who are arrested for impaired driving as there were 13,600 arrests made that year). In 2009, there was a major increase in the number of offenders who were eligible to have interlocks as 1,802 court orders were made after the law expanded interlock options on January 1st, 2009. The first offender legislation has increased interlock usage in Nebraska and this growth continues.

Recommendations

Based on Nebraska's experience, recommendations for a successful implementation of first offender legislation are as follows:

- > Conduct consultations with all stakeholders in advance of introducing legislation to ensure that each of the agencies implicated in the implementation of the program is able to handle the associated workload and to determine whether or not the proposed legislation is compatible with existing program regulations;
- > Receive Federal approval of the legislation prior to its passage if compliance is an issue for federal funding; and,
- > Interlock authorization and issuance is unique to each state's driver licensing system and impaired driving laws and as a result, there is not a single model that can be utilized in each jurisdiction.

New York's First Offender Experience

Legislation

In 1992, New York State implemented a limited pilot ignition interlock program that involved seven counties, which targeted DWI offenders who were seeking post revocation conditional drivers' licenses. In 2007, the program was expanded statewide and ignition interlocks were mandatory for offenders convicted of a 2nd or subsequent impaired driving offense during or after their initial period of revocation when ordered by the court. Ignition interlocks were also mandatory for first offenders convicted of aggravated driving while intoxicated (BAC > 0.18%) as a condition of probation.

On November 18, 2009, New York State passed the Child Passenger Protection Act or *Leandra's Law*, which created a new Class E Felony Offense. This new offense resulted in enhanced penalties for persons who operate a motor vehicle while intoxicated with a child less than 16 years of age in the vehicle. Penalties for intoxicated drivers who cause death or serious injury to a child were also increased. Aggravated vehicular assault and aggravated vehicular homicide were elevated to Class C and Class B felonies with penalties of up to 15 and 25 years imprisonment.

This new law also had implications for New York's interlock program. As of August 15, 2010, ANY person sentenced for a Vehicle Traffic Law misdemeanor or felony offense is required to have an ignition interlock installed in order to operate a motor vehicle. Importantly, the operative date for persons convicted of such offenses springs back to the date of enactment of this new law, November 18, 2009.

Those convicted of their first DWI in New York may also face the following penalties:

- > \$500-1,000 fine (up to \$5,000 for repeat offense or for having a passenger under the age of 16 in the vehicle);
- > Up to four years in jail; and,
- > Six month license revocation for first offender (minimum of 1 year for repeat offenders or first offenders who have a BAC > 0.18%).

New York Vehicle and Traffic Law: 1193(b); 1193(1-a)(c); 1198 Penal Law: 65.10(2) (2-1)

Implementation Process

After the first offender legislation was passed in New York, the NYS Division of Probation and Correctional Alternatives (DPCA) was given the task of promulgating statewide regulations for the purpose of implementation before its effective date. DPCA was also given the authority to set rules and regulations for the efficient operation of the program.

The stakeholders involved in this process included the Governor's Council, the Deputy Secretary for Public Safety and Homeland Security, the legislative council for both Houses, the judiciary and their counsel as well as prosecutors, and the Council of Probation Administrators, and county leadership (county executives and legislatures). Other stakeholders included the New York State Police, the New York State Association of Counties (NYSAC); STOP-DWI Coordinators Association; Drinking Driver Program Association; Treatment Alternatives for Safer Communities (TASC) Programs. Additional agencies that were involved were the Institute of Traffic Safety Management and Research (ITSMR), the DMV, the Office of General Services (OGS), the Office of the State Controller (OSC), the Office of Attorney General (OAG), the Office of Alcoholism and Substance Abuse Services (OASAS), the Department of Correctional Services (DOCS), the Office of Court Administration (OCA), the Division of Budget, and ignition interlock manufacturers.

To facilitate the implementation process, a workgroup was established in December of 2009. This workgroup consisted of approximately six DPCA staff and 12 participants representing other stakeholder agencies. The workgroup was responsible for overseeing the identification of tasks and the development of timelines to complete the tasks. This process was comparable to the process

in Illinois, although individual committees were not created and tasks were handled as a group. The following is a list of the primary tasks to be completed for implementation of the first offender legislation in New York, and many of these tasks involved a significant number of sub-tasks:

- > **Drafting regulations.** This task included gathering knowledge regarding the authority and effect of state regulations and the process for their promulgation; drafting regulations; learning from experiences in other states; promulgating emergency regulations; and both seeking and addressing input and comments from all stakeholders on a regular basis. DPCA convened an information roundtable in March of 2010 to receive input from manufacturers of ignition interlocks.
- > **Developing a request for applications.** These applications were designed to ensure service availability and delivery; compliance with regulations; intent to service regions within the state; development of a fee/charge structure; and provision of interlock devices for offenders unable to afford them. As of June, 2010, DPCA has received seven applications from manufacturers and the majority of these indicate the ability to provide statewide coverage.
- > **Developing and executing contract with vendors.** These contracts are intended to ensure compliance with state regulations, service availability; enforce conditions; establish agreement among parties; and protect the state, localities, operators, and manufacturers. Manufacturers meeting compliance with both DPCA and Department of Health Regulations, submitting acceptable applications and entering into three-year agreements were deemed “qualified manufacturers” and approved to do business on and after August 15, 2010.
- > **Supporting the development of County plans.** As part of the county plans, workgroups must be established; monitoring agencies for conditional discharge cases have to be designated — the default is to probation; local policies that are in conformity with state regulations and policies must be created; and plans for manufacturers to provide devices to persons determined by the courts to be unable to afford them must be developed. The county plans from all 57 counties and the City of New York were due on June 15, 2010.
- > **Developing new program forms and delivering training to staff.** New forms had to be created for the new first offender interlock program and this began with an internal group and then expanded to include probation and court practitioners. In total, DPCA was in charge of altering/creating 12-15 forms (including various notifications and authorizations). Importantly, DPCA developed a statewide Financial Disclosure Report (FDR) Form that must be used by operators requesting judicial consideration of a payment plan or that they be deemed unable to afford the cost of the ignition interlock, and the cost be waived. With regard to training and

education, the focus is on the judiciary and will be delivered to superior court judges at summer institutes and magistrates during their annual conferences. There will also be webinars and OCA broadcasts. Training for law enforcement, prosecutors, probation officers, STOP-DWI, and Drinking Driver programs is also planned.

- > **Creating community education initiatives.** Efforts are underway to create these initiatives to inform the public about the new law and the interlock program requirements. The New York State Police have developed 30 second spots for the media. Press conferences and editorial/op ed columns are also being planned to spread the word about the changes to the DWI laws and the new interlock conditions.

At present, the implementation of the first offender legislation is on track and New York will meet its target implementation date of August 15, 2010.

Resources

In total, 270 days were allocated to implement the first offender legislation following its passage into law in November 2009. During this time, individuals from various agencies (see previous) spent considerable time involved in different aspects of the implementation process. Several staff from DPCA, as well as Governor's Counsel and the Deputy Secretary of Public Safety and Homeland Security spent a majority of their time working on and overseeing the implementation efforts.

Existing agency budgets absorbed the costs associated with implementation and no additional money was appropriated by the government to assist with the process. DPCA is seeking to secure a grant to cover the costs of hiring one community corrections representative to monitor service centers and ensure that there is quality assurance from manufacturers for the interlock devices. Nassau County has already indicated its intent to manage the conditional discharge cases. Monitoring offenders will be done by local probation departments and some counties have indicated their intent to utilize STOP-DWI, Drinking Driver Programs and District Attorneys offices in managing the conditional discharge cases. DPCA has applied to the State's Governors Traffic Safety Committee (GTSC) for a grant of \$3 million in federal National Highway Traffic Safety Administration (NHTSA) funds to assist localities in offsetting the costs associated with supervision and monitoring offenders.

Successes and Challenges

The implementation of the first offender interlock legislation in New York has been a relatively smooth process. There were three main successes in New York that have strengthened the implementation process. First, the State was divided into four main regions and vendors were required to provide full coverage to one or more regions. This process has enabled smaller vendors that had previously conducted business in the State to continue to do business without placing an undue burden on them to provide statewide coverage at the outset, as well as attract new vendors

that could not service the entire state at the onset. This regional strategy provides them an opportunity to grow to achieve statewide coverage and spurs competition. Second, the devices were also divided into different classes with each class of device having different features. This strategy enables higher-risk offenders to be assigned to a device class with more features (e.g., camera, GPS, real-time reporting) by the program monitor as needed, while still enabling the offender to minimize cost and select the model and manufacturer of the device. The State believes this will ensure competition and result in the best service and pricing.

Third, a unique strategy to address the issue of “unaffordability” was developed involving an appropriate method of determining which offenders were not able to afford the interlock. The Courts are responsible for making a determination as to whether or not an offender should be given special consideration as a result of financial hardship. In an effort to bring consistency to decision-making, the DPCA, in cooperation with OCA has created a Financial Disclosure Report that an offender must complete and submit to the Court. The form requires an offender to detail their living arrangements, number of dependents, employment status, monthly income (from various sources), account balances, monthly expenses, and list personal property to assist judges in determining whether or not they have the financial means to afford the interlock. It is hoped that this form will facilitate the identification of offenders who truly are unable to afford the interlock. If the judge makes a determination that the offender is unable to afford the device, special arrangements with the vendor can then be made. Vendors were required to submit their pricing schedules as part of the application process, assuming a statewide “unaffordability rate” of 10%.

There have also been some challenges associated with implementing the legislation (as is the case in many jurisdictions) and a clean-up bill was submitted to address some issues that arose. In addition, the subsequent bill included stronger penalties and clarified that the law also applied to individuals aged 16-19.

Initially, the time available to implement the law (270 days) was a concern as there was much work to be completed. While DPCA is on target to meet the August 15, 2010 launch date and the 270 days was feasible, this did create considerable pressure on staff to complete tasks. DPCA promulgated emergency regulations on April 23, 2010 and has since proceeded with formal rule-making. Some agencies could have benefitted from more time to plan and prepare to accommodate the workload.

Organization and coordination among all of the agencies was well managed as all agencies were engaged in the process and there was much stakeholder consultation. However, given the large number of agencies involved it did pose a challenge as a very high level of communication and collaboration was essential to

successfully coordinate efforts. Strong lines of communication were also needed with each of the 57 counties and the City of New York to guide the consistent development of county plans to support implementation. To assist the localities in implementing the new program, each county has been required to submit plans to DPCA to ensure that they have met all of the requirements needed to accommodate the increased number of interlock offenders.

Another key issue regarding implementation was ensuring quality service from vendors and also driving competition to reduce costs associated with servicing and installation/de-installation of interlock devices. DPCA had to respect the existing relationships that probation agencies had with vendors that were already operating in the state when opening up contracts to new manufacturers. New instruments (e.g., requests for proposal, information and applications) were created to clearly outline what was required and expected of vendors who were interested in doing business in New York. To date, New York has received applications from seven vendors which will result in widespread coverage as well as lowered costs due to the increased competition. This part of the implementation has been viewed as quite successful.

Program Participation

As part of the implementation process, DPCA determined that there is an average of 25,000 impaired driving convictions in New York State each year. Of this number, 9,000 cases involve probation - 3,000 felonies and 6,000 misdemeanors. The majority of the remaining 16,000 cases will be sentenced to conditional discharges, less the number of operators who receive sentences of local and state imprisonment.

The new first offender law will substantially increase the number of offenders who participate in the interlock program. Currently, there are approximately 2,500 interlocks installed in the state of New York. This number is estimated to increase to as many as 20,000-25,000 following the implementation of the new law.

Recommendations

Based on New York's experience, recommendations for a successful implementation of first offender legislation are as follows:

- > Set aside enough time to effectively implement the first offender legislation as this will allow for proper planning, consultation and adequate preparation;
- > Allocate necessary funds to assist the agencies that will be responsible for monitoring offenders;
- > For a large jurisdiction, work collaboratively with localities and plan ahead to ensure that they will be prepared to handle an influx of interlock offenders;

- > Provide training and education for all practitioners involved in the interlock program;
- > Work with multiple manufacturers to create a meaningful quality control process and a competitive environment to lower the costs associated with interlock installation and servicing;
- > Develop a system that requires offenders to provide complete information regarding their financial situation in order to make consistent and accurate findings regarding the issue of affordability;
- > Provide an opportunity for stakeholders to provide input into the development of the legislation, particularly those agencies that will be most affected by the law; and,
- > Designate a strong lead agency.

Washington’s First Offender Experience

Legislation

The Washington alcohol interlock program is unique in that it is a hybrid program that involves both administrative and court-based elements, although the program is managed by the DMV. The program has always included a mandatory provision for first offenders. Prior to the most recent change to the interlock laws in Washington, both repeat and first offenders were required to have an interlock installed following a period of hard suspension. As in most states, the length of the suspension varied according to the nature of the offense.

However, as a result of this law, Washington experienced an increase in the number of offenders who were driving while suspended/revoked. It is believed that this occurred as many offenders were opting not to have the interlock device installed and were driving illegally.

The following chart shows the growing number of drivers cited for driving with either a suspended or revoked license between 2005 and 2008:

2005	16,788
2006	39,974
2007	44,647
2008	40,328

In 2009, Washington sought to reduce the occurrence of unlicensed driving. They revised the existing law to permit offenders to apply for an interlock license in order to drive legally and to retain these offenders in the licensing system where they can be managed and tracked. Offenders can apply for this new license immediately upon arrest, allowing them to continue to drive legally during the administrative suspension period.

Washington law also requires that any person convicted of an alcohol-related offense must apply for an ignition interlock driver's license and have the interlock device installed on all vehicles that they operate. For a first offense, the device is required for a period of one year, for a second offense the device is required for a period of five years, and for a third or subsequent offense the device is required for a period of ten years.

Other penalties for a first offender conviction include:

- > 24 hours – 1 year in jail (2 days – 1 year for BAC > 0.15%);
- > Electronic home monitoring for 15 days (30 days for BAC > 0.15%); (instead of jail)
- > \$350-5,000 in fines (\$500-5,000 for BAC > 0.15%); and,
- > 90 day license suspension (1 year for BAC > 0.15%).

Revised Code of Washington: 46.61.5055

Implementation Process

To implement its most recent set of changes, Washington utilized a comparable process to the one used in Illinois for their first offender legislation. A single team was formed (as opposed to various committees) that was comprised of a State Senator and State Representative as well as employees from various State agencies and associations, including the Washington Department of Licensing, the Washington State Patrol, ignition interlock service providers, the Washington Traffic Safety Commission, members of the District and Municipal Court Judges Association, the Division of Alcohol and Substance Abuse, members of the prosecutors' association, treatment providers and representatives from the Attorney General's office. The team met several times to discuss a variety of issues from the different perspectives of the agencies involved. Issues that were addressed included enforcement of the law, management of indigent offenders and the impact of the law on the courts among others. This dialogue was very useful to assist with the development and drafting of a bill that was introduced during the 2008 legislative session. This bill was passed into law and was implemented on January 1, 2009.

Regular meetings were held in order to discuss and decide which agencies would take on specific tasks. These meetings continued during the pilot phase and post-implementation to address any unexpected consequences and to develop solutions to issues that arose. All members of the original team were included in the drafting of future bills to address those issues. Their participation was integral to ensure there were no surprises when determining how many staff and/or resources the different agencies would need to implement the new law.

The goal of the new legislation was not to further punish the impaired driving offender, but instead to provide them with the opportunity to continue driving legally if they could provide proof of financial responsibility and proof that the interlock device had been installed in their vehicle. Offenders can now elect to pay \$100 application fee and request the new Ignition Interlock License which is valid throughout the period that was formally a hard suspension (this would cover the time from arrest through conviction). Other provisions in the bill included: the creation of an indigency account and clearly defining how it would be funded; a waiver of the right to a hearing for any driver that was issued a new interlock license; and, the creation of a pilot study to evaluate the strategy designed to monitor driver compliance with the interlock and vendor compliance with required procedures.

Similar to the system in Illinois, those offenders who obtain the new license pay an additional \$20 per month to the interlock provider. This money is then sent to the Department of Licensing and put into a fund to support indigent offenders. The rationale behind this decision is that impaired drivers should support indigent costs as opposed to taxpayers. The legislation gave the Department of Licensing the task of developing indigency rules. These rules consist of a combination of options from providing proof of government assistance to proving income below the federal poverty level. Although indigency laws already exist in Washington, the Department felt that the ability to pay for a court-appointed lawyer did not fall into the same threshold of indigency as paying for an interlock device; thus new rules were created.

Enforcement of the new legislation was largely left to the Washington State Patrol. A pilot was launched in two counties that involved visiting homes of offenders who were required to have an interlock installed to determine whether or not they had complied. Visits were also made to installers to ensure that proper calibration and reporting was being done. As part of the pilot, the Washington Traffic Safety Commission is currently receiving and evaluating the data from all the interlock devices. Measures of success for this pilot are still being developed and evaluated.

Resources

The Department of Driver Licensing was allocated seven additional full-time positions to handle the new workload of administering the indigency program and the licensing process. The Washington State Patrol did not receive additional staffing but instead more troopers were shifted to monitor the interlock vendors and measure compliance.

Successes and Challenges

One of the major successes of the implementation process was the inclusion of representatives from the interlock vendors in the team discussions as this provided unique insight and buy-in among stakeholders. The compliance pilot that was

overseen by the Washington State Patrol (visiting service centers and the residences of offenders) also resulted in the new law receiving a great deal of attention and generating more public awareness about the interlock program.

In addition, participation of the bill sponsors in the process really increased their understanding of the purpose and content of the bill and resulted in more clearly written legislation (i.e., reduced the number of interpretations thus fewer court challenges).

The biggest challenge that Washington has faced implementing the new interlock license is managing compliance. Substantial manpower is needed to oversee the compliance of offenders and vendors. The Washington State Patrol shifted resources to monitor compliance but there are still not enough resources to handle all of the offenders who are in the interlock program. Troopers would like to do home visitation so that offenders are aware that someone is monitoring them in hopes that they will remain compliant. However, the workload is too large to allow for widespread visitation across the State at this time.

In hindsight, having more time to implement the new legislation would also have been beneficial. The team was given only 90 days from the end of the legislative session to put the law into practice. This is a standard requirement for all legislation in Washington. Many of the processes that were developed as part of the implementation could have been automated but instead remain manual at this point because the short time frame available for the implementation did not allow for the creation of more sophisticated mechanisms.

Program Participation

Washington has always included first offenders in their interlock program, thus it is not possible to discern pre and post-implementation participation rates. However, since the introduction of the new interlock license allowing offenders to waive the hard suspension period there have been 10,000 applications for the new licenses in the first year alone (January 2009-January 2010) and the number of drivers cited for driving unlicensed has decreased from 40,328 to 30,972.

Recommendations

Based on Washington's experience, recommendations to support the successful implementation of any interlock program legislation include:

- > Allow adequate time for the implementation of the new program;
- > Meet with key stakeholders (especially prosecutors and defense attorneys) as they can provide insight into the process and are able to identify potential loopholes in the legislation;

- > Include representatives from the interlock vendors as they have knowledge about program operation in other jurisdictions as well as experience dealing with offenders and operational issues;
- > Prepare for an increase in workload by providing adequate staffing and resources, particularly in the beginning stages of implementation;
- > If an administrative process is in place at the time of arrest, require that the interlock device be installed at that juncture – do not wait for a conviction; and,
- > Involve and educate Senators and Representatives that are interested in traffic safety and DUI legislation. They can be a wonderful resource.

9.0 CONCLUSIONS



Alcohol interlocks are a proven tool to effectively reduce impaired driving by an average of 64% and protect the public. These strong reductions in recidivism are evident among both repeat offenders and first offenders. It is further agreed that these devices can also support long-term risk reduction among drunk driving offenders when partnered with an appropriate treatment intervention based on offender needs.

While much attention has been devoted to advances in research and technology in the past two decades, there has been a lesser emphasis on the implementation of these devices as part of a broader program. As a consequence, offender participation in programs, even when mandated, has been low. The good news is that greater efforts to strengthen implementation have been ongoing in the past few years and growth in program participation are increasingly evident.

There is much that can be learned about the implementation of first offender alcohol interlock programs from the experiences of Illinois and other jurisdictions. An examination of the strategies and processes that have been employed and the diversity of successes and challenges that jurisdictions have experienced can do much to increase understanding of program implementation and guide future efforts relating to first offender alcohol interlock laws.

Of greatest importance, political and agency leadership and a well-crafted law are critical elements of any process. At the same time, input from and consultation with front-line practitioners and legal staff are much needed to inform decision-making throughout the process – from the development of legislation, during implementation and after the program has become fully operational.

Agencies tasked with implementation also require sufficient preparation time, staff and adequate resources to effectively manage responsibilities. In addition, partners in implementation must be actively engaged in planning and coordinating activities as many tasks are time-sensitive and their completion are closely tied to the tasks of others.

The importance of recognizing the inter-connectedness of the many tasks associated with implementation should not be underestimated as this can seriously affect outcomes.

It is clear that jurisdictions will have to carefully consider the many facets of this issue to inform decision-making regarding how best to implement first offender interlock programs. To demonstrate the potential impact of mandatory first offender alcohol interlock laws, the FBI 2007 Uniform Crime Report arrest data shows 1,114,805 people were arrested for an impaired driving offense. Other research suggests a conviction rate for these offenses ranging from 71-86%. Of some concern, the vast majority of alcohol interlock programs have insufficient infrastructure or resources in place to accommodate such an influx of offenders.

As jurisdictions move forward it will be critical that equal consideration is given to operational practices to support implementation of proposed legislation. This can ensure that the purpose and goals of first offender legislation are achievable and have the intended impact.

Evaluation of these programs should also be strongly encouraged to identify optimal strategies for managing alcohol interlock programs and ensure the goals of these laws are ultimately achieved. In particular, cost-benefit analyses of such efforts can be beneficial to guide decision-making in other jurisdictions.

10.0 RECOMMENDATIONS



Based on the experience of Illinois with the implementation of a first offender alcohol interlock program, in conjunction with the experiences of other jurisdictions with similar programs, several recommendations can be drawn.

- > The importance of a well-crafted law that is based on input from experienced program staff, legal staff and is reflective of existing operational practices cannot be overstated.
- > Input from front line agency staff that are familiar with the existing interlock program and input from staff representing agencies that will be impacted by a first offender program should be sought to inform the development of first offender legislation and ensure that it is consistent with existing practices.
- > Program implementation requires strong political and agency leadership to build agency buy-in and staff support as well as public support.
- > It is important to balance the level of detail in the legislation and administrative rules to provide practitioners with reasonable flexibility to make needed adjustments during program development without requiring additional legislative changes, which may be challenging to achieve.
- > Consultation with and input from agency staff can benefit program development. Agency representation and active staff participation on any committees or teams tasked with implementation is essential, particularly for those agencies that will be affected or implicated by decisions.
- > It is very helpful to include representatives from the interlock vendors as they have knowledge about program operation in other jurisdictions as well as experience dealing with offenders and operational issues.
- > Accountability for implementation should be articulated through clear task assignments, reporting processes, timelines and ongoing follow up to ensure tasks are completed.
- > Adequate resources to support program implementation should be allocated accordingly. It is critical that staff have access to needed resources to support implementation and understand how these resources are being provided.

- > Training is an essential element for staff in all agencies that will be affected by the implementation of the program. This is necessary to create support and buy-in and to properly equip staff to complete tasks as part of the program.
- > It is important to provide the public with information about the program before, during and post-implementation. Information should be disseminated using multiple sources and materials should be easily accessible. Communication can build public support and reduce staff time to respond to inquiries.
- > It can be beneficial to build a self-funded mechanism for the program into the implementation process.

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NOTES



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