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Tornado in Tuscaloosa April 27, 2011



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YOUR ALABAMA STATE TROOPER CHAPTER, ALABAMA PBA IS WORKING FOR YOU



publication of the Alabama State Trooper Chapter of the Alabama Police Benevolent Association, Inc., a nonprofit organization made up of state troopers dedicated to the improvement of the law enforcement profession in the state of Alabama.

ALABAMA TROOPER NEWS

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YOUR ALABAMA STATE TROOPER CHAPTER, ALABAMA PBA IS WORKING FOR YOU

Editor's Corner

Greetings once again readers of *The Alabama Trooper* magazine! The past six months have seen many newsworthy events. The first year of Republican Governor Robert Bentley's administration is now underway. The Bentley administration is facing critical shortages in state funding necessary to maintain essential state services, and the likelihood of additional trimming of state personnel and state programs seems apparent. Governor Bentley and his staff are facing very difficult decisions on which state programs to fund and

which programs to discontinue or reduce in funding. For the first time since the end of the Reconstruction period, a Republican state house and state senate dominated

state government. This change in the legislative make-up from majority Democrat to a super-majority Republican brought about many changes in state government during 2011, not the least being a trimming of state retirement benefits for current and future state employees and the end of 'double-dipping' where a state employee could hold a position in the legislature as well as a state funded position.

The state's economy continues to struggle, along with the national economy. Although there are several bright spots in the state, particularly in the automotive manufacturing and new industrial ventures such as shipbuilding and steel manufacturing in the Mobile area, most of the state continues



to suffer chronic unemployment and underemployment. This high level of unemployment and underemployment reflects directly in tax revenue. Until the national economy recovers, the state's tax base will not recover, and needed tax revenues will not be deposited into the state treasury.

This issue focuses on the Department's response to the deadly and tragic series of tornadoes that tore through Alabama on April 27, 2011. The Department's response by all personnel – troopers, support, and civilian – was immediate and very professional. Without the Department's ability to put over 300 trained, equipped, and pre-

pared troopers into the aftermath of the spring tornado outbreak, the loss of life and property could have been decidedly different.

Also included in this issue are detailed articles on breath testing and Alabama's new DUI laws. The two articles are mutually supporting. The offense of driving under the influence, or DUI, continues to be one of the state's priority law enforcement functions. Every year, hundreds of drivers and passengers are killed or maimed by the irresponsible actions of DUI offenders. The goal of removing the DUI offender from the roadways and successfully prosecuting the defendant in a court of law continues to be one of the Department's main law enforcement functions.

Until next issue, stay safe and continue to uphold the worthy motto of the Department of Public Safety!

Alabama State Troopers Respond to Tornado Outbreak

D uring the early morning of Wednesday, April 27, 2011 weather conditions in the southeast United States created the most violent spring tornados seen in recorded history. A series of hugely powerful F-4 and F-5 tornadoes rolled eastward from the Mississippi state line and crashed into west and northwest Alabama over a four to six hour period, and then the tornados shifted further east, smashing into central and east Alabama during the evening hours. By the end of the April 27th, over 250 Alabama residents had been killed in the massive tornado outbreak. Thousands more were injured; many were severely injured. Hundreds of thousands were made homeless by the tornado's path of destruction. The violent destruction and toll of human life was unlike anything ever seen in the state.

Almost immediately, starting with the first warning being issued by the National Weather Service, Alabama state troopers conducted immediate response and emergency service operations. Swiftly changing roles from enforcement to protection, more than 300 Alabama state troopers assisted with search and rescue efforts after violent tornadoes and storms flattened entire neighborhoods throughout the Southeast, killing at least 250 and injuring more than 2,000 in Alabama alone. The April 27 tornado outbreak was the deadliest in the United States since the tri-state tornado of 1925 and represents the worst U.S. natural disaster since Hurricane Katrina in 2005.

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The unprecedented series of twisters left up to one million Alabama homes without power and forced the nation's second largest nuclear power facility, Browns Ferry, to temporarily shutter. Projected recovery costs are in the billions of dollars. With these unheard of statistics, President Barack Obama met Gov. Robert Bentley in the wrecked city of Tuscaloosa to view, firsthand, the wide brown scar carved upon the earth in what many consider the epicenter of the deadly storm's strike.

"I've never seen devastation like this," President Obama said, after touring the area by motorcade, while state troopers and local authorities patrolled the bombed businesses and





homes along McFarland Boulevard, one of Tuscaloosa's busiest streets before the violent tornado touched down.

During his visit, President Obama praised Gov. Bentley's efforts on starting Alabama's journey along the long road to recovery. "Fortunately, the governor has done an extraordinary job with his team in making sure that the resources of the state are mobilized and have been brought in here," Obama said.

In Tuscaloosa and throughout Alabama, troopers served a vital role in beginning that long road to recovery by sifting through rubble looking for survivors amidst the dead.

Violent weather, including tornadoes, is a regular component of living in the Southeast. As the chaotic scene played out during that first night, troopers and other first responders were quick to realize that this storm was unlike any other in memory.

"Tornadoes are always dangerous, but I don't think anyone expected destruction quite like this," said Tpr. Eric Salvador. Working 12-hour shifts, Salvador was part of a six-trooper team working with local authorities in the hardhit areas in Elmore County, where six people perished. In addition to the search and rescue missions, troopers directed traffic around devastated areas, restricted access to affected areas and guarded against looting.

"Residents in the Windemere community were really thankful of our presence there," Salvador said. "Even with the area closed off and a heavy law enforcement presence, we found looters trying to get away with a television found among the rubble."

The quick, professional, and highly competent law enforcement response by the entire Department of Public Safety to this state's most serious and devastating natural disaster in recent history once again proves the vital role that Alabama state troopers hold in this state's government.

A Simplified Theory of Breath Testing & Breath Test Instrumentation

By Patrick Mahaney

B very Alabama law enforcement officer that makes a DUI arrest is required to direct the defendant to submit to chemical testing under the express terms of the Implied Consent law. Although the Implied Consent law states that blood, breath, or urine are equally valid for testing purposes, and any one of the tests may be used for evidence in a court of law, the vast majority of tests administered under Alabama's Implied Consent law are breath tests. On an annual basis, over 25,000 breath tests are run on Department of Forensic Sciences instruments. The great majority of the 25,000 breath tests are administered to DUI suspects, but a breath test may also be used to test persons on probation, persons subject to court orders, or to investigate employee misconduct. It is appropriate at this point to discuss the basic theory of breath testing.¹

The underlying theory behind all breath test devices is that there is a uniform and standard ratio of breath alcohol to blood alcohol in the ratio of 2100 to 1. In theory, 2100 cubic centimeters of exhaled breath will contain the same per cent by weight of alcohol as one cubic centimeter of whole blood.² This relationship is commonly expressed as the 2100:1 ratio and is also variously referred to by the terms "partition ratio," "conversion ratio," and "breath to blood ratio."

All breath testing devices currently employed in the United States use the 2100:1 ratio to estimate blood alcohol. The underlying basis for this ratio is predicated on a phenomenon known as Henry's Law which states in a closed system, at a given temperature and pressure, for each chemical compound that is dissolved in another liquid compound (e.g., ethanol in water) the concentration of the volatile substance dissolved in the liquid is directly proportional to the vapor pressure of the volatile substance above the liquid. Henry's Law is accepted as basic science, much as the laws of gravity and magnetism are accepted as facts of science. Among the contested issues in breath testing is not the validity of Henry's Law, but deciding the proper breath to blood ratio for use as an evidentiary test, determining the temperature of the exchange process, and ascertaining whether the human respiratory system is in fact a "closed" system.³

Breath testing theory is based on the measurement of alcohol contained in deep-lung or "alveolar" air. As blood flows into the lungs to exchange carbon dioxide for oxygen, a part of the alcohol flowing in the blood stream is also exchanged and exhaled.⁴ Henry's Law provides the basis for estimating the amount of alcohol in the blood stream by measuring the amount of alcohol in exhaled breath. The 2100:1 ratio is used to estimate the amount of ethanol in the whole blood by measurement of the amount of ethanol in an expired breath sample.

¹ This article was reviewed and revised by Thomas E. Workman, BS EE, MS EE, JD. Mr. Workman has over acquired over forty years experience in computer science and electrical engineering and is a nationally recognized expert in the area of infrared breath testing instrumentation. Mr. Workman, a licensed attorney and adjunct professor of law, has testified as an expert witness in litigation involving computer technology and breath test instruments.

² For purposes of relative comparison in size, 2100 cubic centimeters is approximately the capacity of a 2 liter soda bottle. A cubic centimeter is about the size of a regular sugar cube.

³ "The trick is how to formulate the proper ratio of alcohol found in the breath to the alcohol found in the blood." *State v. Johnson*, 717 SW 2d 298 (Tenn. 1986).

⁴ The issue of whether or not exhaled breath alcohol concentration is closely related to alveolar (deep lung) air is vigorously contested in academic circles. Recent experimental research studies have demonstrated that alcohol exchanges dynamically with airway tissue both during inspiration and expiration. This research indicates that the presumed 2100 to 1 ratio may not be as reliable a measure of whole blood as previously indicated. M. Hlastala, Ph.D, *Paradigm Shift for the Alcohol Breath Test*, J. Forensic Science, March 2010, Vol. 55, No. 2 pp. 451-455.



The 2100:1 ratio is based on a 1972 study by the National Safety Council that determined 2100 cubic centimeters of lung air at 34 degrees centigrade⁵ will closely equal the amount of alcohol present in one cubic centimeter of blood. However, there are variances between each person, although the statistical variance is usually slight. Although the 2100:1 ratio has been systematically challenged nationwide by members of the criminal defense bar, no U.S. state court has yet struck down the statutorily mandated presumptive ratio.⁶ In Alabama, the 2100 to 1 ratio is the statutory standard: "Percent by weight of alcohol in the blood shall be based upon grams of alcohol per 100 cubic centimeters of blood or grams of alcohol per 210 liters of breath."7

Breath Alcohol Testing Instruments: Breath alcohol instruments used in the United States currently employ three types of analytical technology to measure alcohol content in the breath. These detection techniques used and the current instrumentation are listed on the following page:

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⁵ Most forensic scientists recognize that thirty-four degrees centigrade (34 C) cannot be the true temperature of a living human's blood. To convert from centigrade to fahrenheit, multiply by 9, divide by 5, and add 32 degrees. Thirty-four degrees centigrade is the same as 93.4 degrees fahrenheit, which is clearly not the temperature of the blood in the body core. Body core temperature is slightly higher than the "standard" oral temperature of 98.6. The average body core temperature of 99.3 fahrenheit is equivalent to 37.3 degrees centigrade.

⁶ See, generally, Annotation, Challenges to Use of Breath Tests for Drunk Drivers Based on Claim that Partition or Conversion Ratio Between Measured Breath Alcohol and Actual Blood Alcohol Is Inaccurate, 90 A.L.R. 4th 155 (1991).

⁷ See, Code of Alabama, 1975, section 32-5A-194 (a)(5).





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Primary Detection PrincipleInstrumentInfrared SpectrometryBAC DataMaster DMT8(including BAC DataMaster and cdm series)Intoxilyzer 5000/80009 seriesElectromechanical Oxidation/Intoximeter EC/IR II¹⁰Fuel Cell(including EC/IR)Dual Detector: Infrared/Fuel Cell Alcotest 7110 Mk III
Alcotest 9510¹¹

Infrared Spectroscopy: Breath test instruments using infrared spectroscopy either as the sole method of analysis or in combination with a secondary method are the most common type of evidentiary breath testing instruments currently in use.¹² All infrared breath testing instruments use infrared light (IR) absorption to detect the presence and concentration of ethyl alcohol (ethanol).

Ethanol is one of a family of alcohols which includes methanol (methyl alcohol or "wood alcohol"), 1-Propanol (propyl alcohol), 1-butanol (butyl alcohol), 2-Propanol (isopropyl alcohol or "rubbing alcohol"), and ethanediol (ethylene glycol or "antifreeze"). All alcohol compounds consist of three elements: carbon, hydrogen, and oxygen. It is the molecular structure of each alcohol compound that differentiates one type of alcohol from other alcohol compounds. All alcohol compounds have an oxygen-hydrogen ending in the molecular structure, and are commonly referred to as "hydroxyl compounds."

COMMON ALCOHOL COMPOUNDS

Common Name	IUPAC	Formula
Methyl alcohol	Methanol	CH ₃ OH
Ethyl alcohol	Ethanol	CH ₃ CH ₂ OH
n-Propyl alcohol	1-Propanol	CH ₃ CH ₂ CH ₂ OH
Isopropyl alcohol	2-Propanol	(CH ₃) ₂ CHOH
n-Butyl alcohol	1-Butanol	CH ₃ (CH ₂) ₂ CH ₂ OH

⁸ DataMaster DMT is manufactured by National Patent Analytical Systems, 2090 Harrington Memorial Rd., P.O. Box 1435, Mansfield, Ohio 44901. www.npas.com

¹² To the editor's best knowledge, no jurisdiction in the United States still utilizes the "wet chemical" oxidation/photometry method that was used in the Breathalyzer 900/900A models or the similarly designed Photo-Electric Intoximeter.

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⁹ Intoxilyzer 5000EN and 8000 are manufactured by CMI, Inc., 316 East Ninth St., Owensboro, Kentucky 42303. www.alcholtest.com

¹⁰ Intoximeter EC/IR II is manufactured by Intoximeters, Inc., 8110 Lackland Road, St. Louis, Missouri, 63114. www.intox.com

¹¹ Alcotest 9510 and 7110 are analytically identical instruments that employ both an infrared and fuel cell detector. The manufacturer is Draeger Safety Diagnostics, Inc., 4040 W. Royal Lane, Ste. 136, Irving, Texas 75063. www.draeger.com





Infrared analysis relies on the absorption of various wavelengths of infrared light. The amount of infrared light that is absorbed during analysis can then be measured and the alcohol concentration determined. The advantages of using infrared analyzers for mass breath testing, and the rapid replacement of the wet chemical method during the past two and half decades, are based on infrared instruments' speed of analysis, simplicity of operation, the elimination of hazardous chemicals, reduced potential of operator error or deliberate manipulation, the ability of the instrument to print test results, and computer processing of the data generated.

The visible light that humans can see is only a small part of the light spectrum, which is part of the "electromagnetic spectrum." The electromagnetic spectrum includes the increasingly shorter wavelength radiations of ultraviolet light, X rays, and gamma rays, and the increasingly longer wavelength radiations of infrared, microwave, and radio wave. The infrared region is that part of the electromagnetic spectrum that is just longer than visible light. Visible light covers the wavelength of 390-770 nanometers [0.39 to 0.77 microns]. The wavelength of light that we can readily see is 0.4 microns (blue light) to 0.7 microns (red light). Infrared region covers the segment of electromagnetic spectrum longer than 0.77 microns but shorter than microwave.

ELECTROMAGNETIC SPECTRUM

Portion of the Spectrum Radio waves Microwaves Far Infrared Mid Infrared Near Infrared Visible light Ultraviolet X-rays Gamma rays Wavelength in Microns Greater than 10_{+3} 25 to 10 + 315 to 50 2.5 to 15 0.7 to 2.5 0.4 (blue) to 0.7 (red) 10_{-3} to 4 x 10_{-1} 10_{-6} to 10_{-3} Less than 10_{-6}

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Light of a specific energy means light of specific wavelength can be measured. Light, like electromagnetic radiation in general, has properties of both waves and particles. Light has the properties of particulate matter and is emitted and absorbed in discrete amounts called "photons." Each photon of light has a specific energy. The shorter the wavelength, the higher the energy of a photon of light. For example, ultraviolet light radiation has higher energy than infrared light radiation. This is well-known with the dangers associated with ultraviolet rays that can cause skin burning and cancer formation. Ultraviolet radiation is capable of producing actual chemical changes to the molecule by breaking down the bonds that hold the molecule together. The much less energetic infrared rays cannot break bonds, but can cause more subtle effects, such as bending or stretching the bonds connecting atoms. The absorption of light rays of specific energy to cause specific effects in molecules and atoms is the basis of spectroscopy.¹³

Light travels through space much as waves on the ocean, and are categorized according to speed, frequency, and amplitude. Waves of light travel at the speed of light, thus the only variables are frequency and amplitude. Infrared spectroscopy capitalizes on a foundational law of physics that infrared light can be absorbed at a particular wavelength by molecular bonds present in all molecules.

Infrared breath testing devices were first placed on the market in 1972 with the introduction of the "Intoxilyzer" produced by Omicron Systems Corporation. The rights to the original Intoxilyzer were acquired by CMI, Inc. located in Owensboro, Kentucky. The original Omicron Intoxilyzer was then sold as the CMI Intoxilyzer 4011. CMI subse-

¹³ For a comprehensive understanding of the principles of infrared breath testing, see Erwin, *Defense of Drunk Driving Cases*, 3rd Ed., Chapter 18A.

quently replaced the 4011 with the Intoxilyzer 5000 series. The Intoxilyzer 5000 series employs the infrared spectrum of 3.4 micron for ethanol detection and added a series of filters to detect interferents.¹⁴ The latest model, the Intoxilyzer 5000 EN, incorporates five infrared filters and a cooled detector for greater detector stability.

Infrared light emitted at 3.4 micron, 7.2 micron, 8.2 micron, 9.5 micron, and 11.4 micron will be absorbed by ethanol. Most currently manufactured infrared breath test devices, such as the Intoxilyzer 5000/8000 series, only use the 3.4 micron wavelength for ethanol detection. One problem with the use of the lower wave length instrumentation is common alcohol compounds such as methanol or acetone are also detected at the 3.4 micron range, thus inhibiting specificity for ethanol.

In contrast, the current breath test instrument used by the state of Alabama, the Draeger 7110 Mk III, uses the 9.5 micron range for infrared light analysis and a fuel cell alcohol analyzer. The first feature that sets the Draeger 7110 apart from other infrared breath detection instruments is the design to utilize the infrared light at 9.5 micron wavelength.

Absorption of infrared light in the 9.5 micron region of the electromagnetic spectrum is characteristic of the carbonoxygen single bond. Ethanol has two bonds — a C-H bond and C-O bond. Most organic compounds have C-H bonds, while relatively few have a C-O bond. Therefore, the potential for interference is much less when measurements are made in the 9.5 micron range of the infrared spectrum. However, a number of solvents and other alcohols do have the C-O bond, so absorbance of infrared light in the 9.5 range does not, in itself, assure specificity.

Using the Draeger 7110 instrument for breath analysis, from a single breath sample, two separate analyses can be obtained by two different methods. Each test serves as a check on the other. If different technology is used for the two tests, agreement between the two tests significantly decreases the likelihood that other volatile organic compounds were wrongly identified as ethanol.¹⁵ A second distinct feature of the Draeger 7110 is that the instrument incorporates an electromechanical (fuel cell) detector in addition to infrared absorption detector. The infrared absorption process is nondestructive. When the breath sample passes through the chamber, the infrared light that is directed through the chamber excites the molecules of alcohol, but does not destroy them. After passing through the chamber, the breath passes through the electromechanical detector and is analyzed by the fuel cell where it is oxidized. The Draeger instrument use of two independent methods to analyze a single breath sample enhances credibility of result, assuming close agreement in the test results from the two different detection devices.

¹⁴ An interferent is a chemical which has a molecular structure that is similarly enough to ethanol, so that the molecules of the interferent will absorb infrared light at one or more of the frequencies used by the breath test instrument.

¹⁵ For an extended review and detailed analysis of the Draeger Alco-Test 7110 Mk III in actual use in one jurisdiction, see Workman, Massachusetts Breath Testing For Alcohol: A Computer Science Perspective, 8 J. High Tech. L. (2008).

Alabama's New "Get Tough" on DUI Laws

By Patrick Mahaney

N June 9, 2011, Gov. Robert Bentley signed into law Act 11-613, the "ignition interlock" bill (HB 361), and Act 11-621, the "double minimum punishment" bill (SB 67). Both acts will have a significant impact on Alabama DUI law. The effective date of both acts was September 1, 2011. However, the implementation date for the ignition interlock act will not start until one year later, on September 1, 2012. The "double minimum punishment" act is discussed first.

Act 11-621 adds an entirely new sub-section (i) to Code section 32-5A-191. This sub-section increases the punishment inflicted on a convicted DUI offender under the following conditions:

• If the blood alcohol concentration is .15% or greater while operating or in actual physical control of a vehicle, the convicted offender *"shall be sentenced to at least* double the minimum punishment that the person would have received if he or she had had less than 0.15 percent by weight of alcohol in his or her blood."

- If the adjudicated offense is a misdemeanor conviction, the minimum period of incarceration is one year, "all of which may be suspended except as otherwise provided for in Section 32-5A-191(f) and Section 32-5A-191(g)." [Note: section (f) requires a minimum period of five (5) days incarceration for a second offense conviction within the past five years and section (g) requires sixty days incarceration for a third offense conviction within the past five years.]
- "In addition, the Director of Public Safety shall revoke the driving privileges or driver's license of the person convicted for a period of not less than one year."

The requirement for the Director of Public Safety to enter a one year's revocation order of driver license or privilege is a change to existing law. Currently, on conviction

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of first offense DUI, the statutory period of driver license removal is a 90 day suspension. See, *Code of Alabama*, 1975, section 32-5A-191 (e). However, and in contradiction to the new statute, in current Code section 32-5A-304 (c), that part of the Code states:

"If a license is suspended under this section [Alabama Administrative License Suspension Act] for having .08 or more by weight of alcohol in the blood of the person and the person is also convicted on criminal charges arising out of the same occurrence for violation of Section 32-5A-191, the suspension under this section shall be imposed, but no period of suspension or revocation shall be imposed under Section 32-5A-191." (emphasis added).

Since the new act does not expressly repeal or amend 32-5A-304, the unresolved question is if the Alabama driver license has already been suspended under the terms of the administrative license suspension act for the arrest and breath test result, will the Director of Public Safety upon receipt of notice of conviction from the trial court then enter a new license removal order and change the status from suspended to revoked? Clearly, section 32-5A-304 (c) is in direct conflict with the new sub-section (i). The general rule of statutory construction is repeal by implication is disfavored, yet another rule of statutory construction is when two statutes are in direct conflict, the latter statute takes precedence over the former. This unresolved conflict in statutory language will mostly likely require a formal Attorney General's Opinion to resolve the issue.

Act 11-613 is the new "*ignition interlock*" act that will require the installation of an ignition interlock device on a designated motor vehicle of a person convicted of first offense DUI under certain conditions and *all* second and subsequent convictions, within the past five years.

Act 11-613 amends current 32-5A-191 (e), the "first offense" sub-section, to require the installation of an ignition interlock device for any person convicted of DUI under any of the following conditions:

- The "blood alcohol concentration of 0.15% or greater" or
- "any person refusing to provide a blood alcohol concentration" (sic) [breath test refusal] or
- "if a child under the age of 14 years was present in the vehicle at the time of the offense" or
- "if someone else besides the offender was injured at the time of the offense"

Upon receiving notice of conviction of DUI under any of the four listed conditions, the Director "shall suspend the driving privilege or driver's license of the person convicted for a period of 90 days and the person shall be required to have an ignition interlock device installedfor a period *of two years*" [Note: The period of license removal under Act 11-613 is a 90 day suspension on first offense, even with a .15% blood alcohol concentration, and *not* the one year's revocation as required under Act 11-621.]

On second offense within a five year period, the person so convicted shall be required to have an ignition interlock installed for a period of two years from date of driver license re-issuance. The requirement for ignition interlock on second offense DUI is not contingent on any enumerated factor, such as outlined in sub-section (e), above.

On third offense within a five year period, the convicted offender is required to have an ignition interlock installed for a period of three years from date of driver license reissuance. On fourth offense, the convicted offender is required to have an ignition interlock installed for a period of five years from date of driver license re-issuance.

In sub-section (q) of Act 11-613, the statute imposes additional fee of \$75 *per month* (\$300 total) to be paid to the sentencing court during the first four months that ignition interlock device is required, with the distribution of monies to the following entities:

- 40% to the Alabama Interlock Indigent Fund
- 25% to the court having jurisdiction over the case
- 20% to the Department of Public Safety
- 15% to the district attorney having jurisdiction

In addition, the Department of Public Safety is authorized to set a license issuance fee of \$150 for a special "ignition interlock required" type license to indicate the operator is required to maintain an interlock device. Upon application for re-licensing to obtain a standard Alabama driver license, the Department is authorized to set a license issuance fee of \$75. The \$75 license re-issuance fee is in addition to the presently required \$275 "reinstatement fee" to clear the license status.

Prior to re-licensing, the convicted offender is required to identify to the sentencing court the designated vehicle by vehicle identification number (VIN) that the device will be installed. The offender is then required to provide proof to the Department of Public Safety that an approved interlock device was installed on the designated vehicle as a condition for re-licensing. Any convicted offender required to utilize ignition interlock who operates a vehicle without ignition interlock shall be subjected to an additional period of six months interlock requirement, in addition to other penalties.

If the person is re-arrested for a DUI offense and the convicted offender refused to submit to breath testing and was subsequently convicted, or the convicted defendant's blood alcohol concentration was 0.15% percent or greater, "The duration of the time an ignition interlock device is required by this section shall be doubled..." In other words, more

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running parallel to Act 11-621, the "double minimum punishment" act, under the terms of sub-section (q) in Act 11-613, if the DUI defendant is subsequently convicted of the offense of DUI, and the person either refused to submit to a chemical test or the test result was .15% or greater, the duration of time the ignition interlock is required will be doubled.

Act 11-613 added a new statute to enforce the ignition interlock act – section 32-5A-191.4. The new section requires the Department of Forensic Sciences to establish and approve rules and regulations governing all aspects of the ignition interlock program, to test and evaluate approved models, and to provide governmental oversight to the private providers. Under the terms of 32-5A-194.4, it is clearly the intent of the act that private "for profit" companies will install, calibrate, service, and maintain the interlock devices. The state of Alabama will not be engaged in the installation and service of the interlock devices.

Under the terms of section 32-5A-194.4, a convicted offender may apply for indigent status and the sentencing court, upon application and review, *may* grant indigent status for interlock installation. If granted, the convicted offender will then locate an approved provider and have an ignition interlock installed, provided the convicted person must pay one-half (1/2) the costs associated with installation and maintenance. *"This section shall not affect any fees associated with the driver's license of the defendant."* There is no "indigent status" for driver license application fees or reinstatement fees; all driver license fees must be paid in full to the Department of Public Safety prior to re-licensing.

All approved interlock providers will be required to deposit one and one-half percent of all payments (1.5%) collected to be paid into the Alabama Interlock Indigent Fund as a funding source to underwrite the indigent interlock applications.

If the convicted defendant does not own a vehicle, that person shall be required to pay \$75 per month to the clerk of the court for the same period of duration as if an ignition interlock was installed. The clerk of the court shall transmit the monies the state treasury for use by the Department of Public Safety for *"impaired driving education and enforcement."*

In sub-section (i) of Act 11-613, any person who operates a vehicle without an ignition interlock device when required "shall be immediately removed from the vehicle and taken into custody." This section of law authorizes the immediate custodial arrest of any non-complying convicted DUI offender, and the vehicle "shall be impounded" and not released except in accordance with 32-6-19 (b). [32-6-19 (b) is the "tow and impound" statute authorizing law enforcement officers to seize any vehicle where the driver is operating the vehicle with a revoked driver license or the license or privilege is suspended as a consequence of a DUI offense.] Any violation of the express terms and conditions of ignition interlock use, such as unlawful modification or disabling the device, or failure to operate an ignition interlock equipped vehicle when required, upon first conviction is a Class A misdemeanor and the person so convicted shall be required to use the ignition interlock for an additional six month period. Upon second conviction, the court shall impose a mandatory jail sentence of not less than 48 hours and the person so convicted shall be required to use the ignition interlock for an additional six months. Upon third or subsequent conviction, the court shall impose a jail sentence of not less than five days and the defendant shall be required to use an ignition interlock for an additional one year.

Act 11-613 takes effect on September 1, 2011. Section 3 states: "The substantive provisions of this act shall be operative 12 months after the effective date of this act." (September 1, 2012.)

Editor's Note: The actual impact of ignition interlock devices on Alabama DUI practice and procedure will not be known for several years, but a survey of the practices in other states indicate the installation and use requirement of ignition interlock for convicted DUI offenders will generally reduce, but not solve, the problem of the recidivist "drunk driver." As example, the state of New Mexico, one of the pioneer states in implementing the requirements for ignition interlock, reported a 37% reduction in the state-wide re-arrest rate of convicted DUI offenders, a 31% over-all reduction on alcohol-involved crashes, and a 41% reduction in alcohol-involved injuries, when comparing 2002, the initial year of ignition interlock requirement, to 2009, the latest full year for highway safety statistics. According to Richard Roth, Ph.D, program administrator for Santa Fe Impact DWI, a traffic safety activist group, ignition interlock has significantly reduced overall alcohol related fatalities, although "gap" areas remain. The "gap" areas in New Mexico include convicted offenders continuing to drive while license is revoked or driving a non-interlocked vehicle, waiting out the license revocation period (not applicable under Act 11-613), and persons arrested for DUI waiting final adjudication of the case, yet continuing to drive a noninterlock equipped vehicle.

Exactly how many Alabama drivers will be required under Act 11-613 to install an interlock device is open to speculation. The total number of DUI cases in 2009, the last year that DPS had full records, was 21,905, and of that number, 16,912 were convicted (77%). Of the total number of arrests in any given year, an average 34-36% of arrests are reported as refusing the breath test. Of the total number that take the breath test, about 64-67% of all cases, 40-41% of those cases will result in a test result of .15% or greater more

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(DFS supplied data). By determining the approximate number of test refusals (+/-35%) and the approximate number of breath test results .15% or greater (+/-40%), to the total number of 16, 912 persons convicted, it is estimated that *approximately 12,600 persons will be subjected to the ignition interlock requirement annually*, assuming the total number of DUI arrests remains in the 20,000-22,000 range yearly. That number is, of course, a rough estimate. Under the express terms of Act 11-613, only arrested subjects *convicted* of DUI will be subjected to the interlock requirement. Breath test refusal, in itself, will not carry the sanction of ignition

interlock, and a test refusal that does not result in conviction will continue to be dealt with under the provisions of the Alabama Implied Consent Act and the Administrative License Suspension Act. Further, since "first offense" DUI offenders convicted with a test result of .14% or less will not be subjected to ignition interlock, there will be substantial effort by the defense bar to "reduce" or amend the DUI arrest to a lesser test result, usually in exchange as a plea bargain. Plea agreements will undoubtedly off-set the number of persons required to comply with the ignition interlock requirement.

