

# TEXAS JUSTICE COURT TRAINING CENTER

TRAFFIC SAFETY INITIATIVE NEWSLETTER  
JULY 2014

## IN THIS ISSUE

Message from the Program Attorney .....	1
2014-2015 Training Schedule.....	2
TJCTC Staff, JPCA Budget and Oversight Comm. ....	3
DWI Fatalities Involving Vulnerable Road Users: A Growing Problem.....	4
Traffic Safety Websites ...	6
Per Se Drug Intoxication Laws: Different Approaches in Different States .....	7
New Ignition Interlock Legislation Aims To Save Thousands From Drunk Driving Deaths .....	9

## A MESSAGE FROM PROGRAM ATTORNEY ROB DANIEL

Greetings, and welcome to the most recent edition of the Texas Justice Court Training Center Traffic Safety Initiative's annual newsletter, made possible by a grant from the Texas Department of Transportation. The Texas Justice Court Training Center is very pleased to have this opportunity to bring all justices of the peace, constables, and court personnel up to date on the program's progress and success over the past year, as well as to provide information regarding recent trends and developments in traffic safety.

In the past education year, the Training Center provided training in traffic safety issues at all 20 hour justice of the peace seminars and 16 hour court personnel seminars. This year, for the second year in a row, our education focused on the offense of Driving While Intoxicated (DWI) and the duties of a justice of the peace as a magistrate.

Specifically, we discussed issuing blood search warrants when appropriate. We also discussed setting and monitoring conditions of bond, as well as taking appropriate action when a defendant violates the conditions of bond. I am

pleased to report that statistics released by the Office of Court Administration indicate that many of you have implemented the procedures that we discussed at this year's seminars. OCA reports that there was a 28.1% increase in ignition interlock device orders issued by JPs during the 2013 fiscal year, as well as a 28.7% increase in other bond conditions set by JPs. (By contrast, ignition interlock device orders and other bond conditions set by municipal court judges decreased during the 2013 fiscal year.)

TJCTC continues to update and expand its DWI Bond Schematic Program. This program assists individual Texas counties in adopting a comprehensive plan for setting DWI bond conditions, and is a component of a statewide plan to reduce the incidence of DWI offenses across Texas.

For each county that elects to participate in the program, TJCTC will work with all criminal magistrates, local prosecutors, and potential monitoring agencies to

create forms specific to that county. These forms may be based on TJCTC's Universal DWI Bond Schematic (which may be found on the TJCTC website), or forms that your county currently uses in the magistration process, but will be modified to reflect the bond condition options agreed upon by county officials.

If your county wishes to participate in the program, simply fill out the enrollment form located on the TJCTC website. If you received this newsletter via our E-Letter system, a copy of the enrollment form is attached to the email. We hope many of you will choose to participate. Please do not hesitate to contact me if you have any questions regarding the program.

In 2015, we will continue to offer instruction regarding magistrate duties associated with DWI offenses. However, we will also provide instruction regarding the proper issuance of occupational driver's licenses. As always, we welcome your input as we put together the material for 2014-15. We think it will

be an exciting year of education that will improve your ability to perform your duties as a justice of the peace or a justice court clerk, and we look forward to seeing all of you as we travel throughout Texas.

## 2014-2015 TJCTC TRAINING SCHEDULE

### 20 HOUR JUSTICE OF THE PEACE SEMINARS

November 17-19: Galveston  
February 4-6: San Antonio  
February 18-20: Austin  
May 27-29: Rockwall  
June 29-July 1: Lubbock

### 16 HOUR COURT PERSONNEL SEMINARS

January 21-23: Austin  
February 23-25: Galveston  
March 18-20: Rockwall  
April 20-22: San Antonio  
May 18-20: Rockwall  
June 9-11: Austin

**THE TRAFFIC SAFETY INITIATIVE IS FUNDED BY A GRANT FROM THE TEXAS DEPARTMENT OF TRANSPORTATION, IN ASSOCIATION WITH TEXAS STATE UNIVERSITY—SAN MARCOS AND THE JUSTICES OF THE PEACE AND CONSTABLES ASSOCIATION OF TEXAS.**

TJCTC STAFF

ROGER ROUNTREE  
Executive Director

ANGIE VARELA  
Associate Director

BRONSON TUCKER  
General Counsel

THEA WHALEN  
Program Attorney

ROB DANIEL  
Program Attorney

GABE AYSON  
Accountant

JEN MORALES  
Program Administrator

HEATHER HIDALGO  
Program Administrator

LAURA VILLAREAL  
Registrar

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# DWI Fatalities Involving Vulnerable Road Users: A Growing Problem in Texas

By Rob Daniel, Program Attorney, TJCTC

On the night of March 12, 2014, an intoxicated driver drove his vehicle into a crowd of pedestrians outside a music venue in Austin during the annual South by Southwest (SXSW) festival. Four people were killed and dozens were injured by the senseless actions of Rashad Owens, who was fleeing from officers of the Austin Police Department. Owens has been charged with capital murder. This incident happened just a few blocks from the Texas Justice Court Training Center offices.

Unfortunately, the SXSW crash is not the only recent incident involving intoxicated drivers and pedestrians in downtown Austin. On February 3, 2012, a vehicle driven by Nicholas Colunga sped through a red light at the intersection of 7th Street and San Jacinto and struck a

group of pedestrians. (The Austin Police Department was able to apprehend and charge Colunga with several criminal offenses mainly because a motorcyclist, Sisto Perez, chased Colunga down, dragged him out of his vehicle, and hogtied him with a belt.)

One of the injured pedestrians, University of Texas soccer player Kylie Doniak, spent six months in a coma following the incident. Doniak suffered multiple injuries, including a traumatic brain injury, and had to re-teach herself to walk and talk following the accident.

In August of 2013, a Travis County jury convicted Nicholas Colunga of assault with a deadly weapon and sentenced him to 14 years in prison. In May of this year, Kylie Doniak graduated

from the University of Texas.

After the SXSW tragedy, I looked at Texas Department of Transportation (TxDOT) crash statistics for the last 10 years. These statistics indicate that collisions between intoxicated drivers and vulnerable road users (pedestrians, bicyclists, etc.) are on the rise in Texas. From 2003 to 2010, an average of 56 pedestrians and bicyclists were killed by intoxicated drivers each year. From 2011 to 2013, the average number of pedestrians and bicyclists killed by intoxicated drivers each year doubled to 112. What is driving this increase? The answer is unclear, but I have a few guesses.

Increasing urbanization in Texas is a potential contributing factor to increased DWI fatalities involving pedestrians and

bicyclists. We all know Texas is growing rapidly, but Texas cities are growing far more rapidly than rural areas. The Texas Comptroller's Office reports that "While the state's rural population increased between 1990 and 2000, from 3.2 million to 3.6 million, faster urban growth meant that the rural share of the state's population actually fell from 18.8 percent in 1990 to 17.5 percent in 2000. Since then, the U.S. Census Bureau estimates that the portion of Texans living in rural areas has continued to fall, to 14 percent in 2005. Between 2000 and 2005, 11 of Texas' "metro" counties – counties with one or more urban areas – saw population increases of at least 20 percent, while 93 non-metro counties experienced losses. Metropolitan areas were far more likely to grow than their rural counterparts."

Although a lot of Texas' "urban" growth is actually occurring in the suburbs (for example, the population of Collin, Rockwall, Kaufman and Ellis counties increased more than 10% between 2000 and 2005, while Dallas

County's population increased less than 10% during the same time period), downtown condominium towers have recently sprouted in Austin, Houston, and Dallas. Construction of downtown condo towers leads to more downtown residents, which leads to a higher number of shops and restaurants in downtown areas, which leads to more suburban residents driving into those downtown areas to eat, drink, and shop at night. As a result, it's increasingly common to see pedestrians and cars sharing city streets in downtown areas in Texas from early evening to late at night.

Cars driving in downtown areas must frequently yield to pedestrians in crosswalks when turning and must stop and/or yield at red lights, stop signs, and other traffic control devices in order to allow pedestrians to cross safely. Studies, as well as anecdotal experiences such as the incident in which Kylie Doniak was a victim, show that intoxicated drivers have difficulty obeying traffic signals and observing

pedestrians and bicyclists in the roadway.

Another potential factor contributing to the increase in DWI fatalities involving pedestrians and bicyclists is that Americans, particularly younger Americans, are increasingly choosing not to drive. The Atlantic reported in 2013 that "The average U.S. driver traveled 12,492 miles in 2011, down about 1,200 miles, or 9 percent, from our mid-aughts peak." If Americans are driving less, how are they getting around? The League of American Bicyclists reports that the number of people who commute to work by bicycle increased by 61.6 percent from 2000 to 2013. And the New York Times, reporting in March on a report from the American Public Transportation Association, stated that "more Americans used buses, trains and subways in 2013 than in any year since 1956 as service improved, local economies grew and travelers increasingly sought alternatives to the automobile for trips within metropolitan areas." It is generally accepted that increased public

transportation ridership is associated with an increase in pedestrian traffic, since people must walk to and from the bus stop. Therefore, increasing use of non-automobile transportation modes means that the number of vulnerable road users on American streets is also increasing.

Traffic safety professionals use the phrase “vulnerable road users” in part because a pedestrian or bicyclist who is struck by a car at a low speed is likely to sustain injuries and a pedestrian or bicyclist who is struck by a car at a high speed has very little chance of survival. A 2010 study by the United Kingdom Department of Transport indicates that a pedestrian struck by a vehicle traveling at 20 miles per hour has a 97.7 percent chance of survival. A pedestrian struck by a vehicle traveling at 30 miles per hour has a 92.9 percent chance of survival, while a pedestrian struck by a vehicle traveling at 40 miles per hour has a only a 69.1 percent chance of survival. A pedestrian struck by a vehicle traveling at 50 miles per hour has only

a 27.7 percent chance of survival. At 60 miles per hour and above, a pedestrian’s chances of survival are virtually nonexistent. (The vehicle that struck Kylie Doniak in downtown Austin was estimated by Austin Police Department detectives to be traveling at 49 miles per hour.) Other studies have shown survival rates to be similar for bicyclists. We can also see the vulnerability of these road users in TxDOT crash statistics. In 2013, 5,184 motor vehicle crashes involving pedestrians and bicyclists resulted in death or serious injury, whereas 2,449 crashes resulted in injury only. (TxDOT also reports 167 non-injury crashes and 18 “unknown injury” crashes.)

Texas’ largest cities are responding to the state’s urban boom in part by building light rail lines and adding bicycle lanes. It’s therefore likely that the number of vulnerable road users interacting with Texas drivers will continue to increase over the next decade (at least). It’s easy to see that adding driver intoxication and/or distraction to the mix

when drivers, pedestrians, and cyclists are sharing streets is highly dangerous. Drinking and driving is never okay, and the results are unfortunately often tragic. But they are particularly tragic when the victims are unprotected human beings who didn’t have a chance against a 4,000 pound vehicle being driven by an intoxicated driver.

## TRAFFIC SAFETY WEBSITES

<http://www.nhtsa.gov/impaired>  
National Highway Traffic Safety Administration Impaired Driving Website

<http://tti.tamu.edu/group/cts/>  
Texas Transportation Institute Center for Traffic Safety

<http://www.txdot.gov/safety/tips/default.htm>  
TxDOT Traffic Safety Tips

<http://www.nsc.org/Pages/Home.aspx>  
National Safety Council

<http://www.texas Trafficsafety coalition.com/>  
Texas Traffic Safety Coalition

<http://www.tjctc.org/Educational-Programs/Traffic-Safety.html>  
TJCTC Traffic Safety Initiative



# Per Se Drug Intoxication Laws: Different Approaches in Different States

By Rob Daniel, Program Attorney, TJCTC

Most Texans know that it's illegal to drive if one's blood alcohol concentration is over 0.08 grams of alcohol per 100 milliliters of blood. However, many Texans also hold the mistaken belief that one can never be arrested for DWI if one's blood alcohol concentration is under 0.08.

Texas law defines "intoxication" as: "A) not having the normal use of mental or physical faculties by reason of the introduction of alcohol, a controlled substance, a drug, a dangerous drug, a combination of two or more of those substances, or any other substance into the body; or (B) having an alcohol concentration of 0.08 or more." This means that a person who drinks a 20 ounce beer, smokes a quarter-ounce of marijuana, and drinks five cups of coffee might not have a blood alcohol concentration of 0.08, but it's highly likely

that this person would lack the normal use of his or his mental physical faculties and be considered intoxicated under Texas law.

0.08 is what we call a "per se limit," or a non-subjective limit at or above which one is legally considered to be intoxicated. Per se limits for alcohol-based intoxication exist throughout the United States. However, some states have also adopted per se limits for other intoxicating substances, such as marijuana and cocaine. What do these per se limits look like? Let's take a look at a few different states.

Colorado: The Centennial State, as many of you know, has legalized recreational marijuana sales. As part of this legalization effort, the state legislature also set a per se limit for tetrahydrocannabinol (or THC, the active ingredient in marijuana) of 5 nanograms

per milliliter of blood. (The state of Washington, which has also legalized the recreational sale of marijuana, has an identical per se limit.) Colorado has no per se intoxication limits for other drugs.

Georgia: The Peach State takes a zero-tolerance approach to drug use in setting per-se intoxication limits. Georgia's per se intoxication limit for drugs is: "any amount of marijuana or a controlled substance...present in the person's blood, or urine, or both." Several other states, such as Arizona, Michigan, Iowa, and Rhode Island, have adopted zero tolerance approaches to drug-based intoxication.

Nevada: The Silver State is known for very strict drug possession laws, but it has not taken the zero-tolerance approach to setting per se drug intoxication limits.

Nevada has created per se limits above zero for several controlled substances, including heroin (50 nanograms per milliliter of blood), cocaine (also 50 nanograms per milliliter of blood), marijuana (2 nanograms per milliliter of blood), and methamphetamine (100 nanograms per milliliter of blood).

Virginia: Like Nevada, the Old Dominion has adopted separate per se intoxication limits for different types of drugs, including cocaine (.02 milligrams of cocaine per liter of blood) and methamphetamine (.1 milligrams per liter of blood).

As you can see, different states have taken very different approaches. In Texas, no per se limits exist for drug-based intoxication. However, a person who has ingested a controlled substance may nevertheless be considered intoxicated based on the loss of his or her mental or physical faculties.

The 0.08 per se limit for alcohol-based intoxication is based on federal policy.

States which do not have a 0.08 per se limit stand to lose federal highway funding. The article below describes proposed federal legislation which would require states to adopt a uniform policy for ordering persons convicted of drunk driving offense to install ignition interlock devices. (Texas would be required to change its laws if the legislation, as described below, were passed.)

What do you think? Is it better to have a national policy for addressing the problem of driving while intoxicated, or is it better to let each state experiment with different laws in order to come up with the best solutions? Should Texas adopt per se limits for drug-based intoxication? If so, which state do you think would be a good model? What are the pros and cons of adopting such limits? Let us know what you think, on social media or in person.

## CONTACT TJCTC

701 Brazos Street, Ste. 710  
Austin, Texas 78701

Tel: 512-347-9927

Fax: 512-347-9921

Email: [tjctc@tjctc.org](mailto:tjctc@tjctc.org)

Twitter: @TJCTC

Facebook: Texas Justice  
Court Training Center



# New Ignition Interlock Legislation Aims To Save Thousands From Drunk Driving Deaths

By Tanya Mohn  
Forbes.com

New federal legislation governing ignition interlocks for drunk drivers will be introduced when the House of Representatives reconvenes this week.

The proposed law, to be presented on Tuesday by Representative Nita Lowey (D-NY), would mandate that states require all convicted drunk driving offenders to install an ignition interlock for a minimum of six months.

More than 10,000 people die each year due to a drunk driver, Congresswoman Lowey said in a statement. "In addition to the enormous emotional toll, drunk driving costs taxpayers \$132 billion each year. We know interlocks work and it's time for every state to adopt this lifesaving measure."

Mothers Against Drunk Driving (MADD), a nonprofit that works to protect families from drunk driving and underage drinking, joined on a media call during which the congresswoman announced Alisa's Law. The group supports the proposed legislation and assisted in drafting the measure, which is named in honor of the daughter of its current president Jan Withers' daughter, Alisa Joy, who was killed in 1992 by an underage drunk driver.

"Requiring ignition interlocks for all convicted drunk drivers is now recognized as the best way to prevent them from reoffending," Withers said in a statement. "Naming this legislation after my daughter is an honor, and a message to the public that the fight against drunk driving is not

going to end until there are no more victims of this violent crime."

The average drunk driver has driven drunk 87 times before being caught, according to a compilation of studies by MADD.

The Insurance Institute for Highway Safety, a nonprofit financed by the insurance industry, described an interlock device as a breath-testing unit that a driver must blow into before starting a vehicle; if alcohol is detected, the ignition is disabled. Ignition interlocks allow drunk drivers to continue to drive while protecting the public and all states have laws either requiring interlocks for certain offenders or allowing courts to order interlocks, according to the institute.

In 2006, New Mexico was the first state to require all convicted drunk drivers, including first time offenders, to use an ignition interlock, MADD noted. Currently, 24 states have passed similar legislation and California has as a pilot program that covers more than 13 million people. States like Oregon and Arizona, the group said, have reduced drunk driving deaths by more than 40 percent by requiring interlocks for all convicted drunk drivers.

MADD cited research from the Centers for Disease Control and Prevention indicating that ignition interlocks reduce DUI recidivism by 67 percent and license suspension is not effective in reducing drunk driving deaths, as 50-75 percent of convicted drunk drivers will continue to drive even on a suspended license.

The group called Alisa's Act "the next step in saving lives due to drunk driving," which represent nearly one-out-of-three highway deaths, to ensure that all Americans are protected.

"It's time for all states to pass this lifesaving law," Withers said.

This article originally appeared on Forbes.com. To view the article online, please visit the link below.

<http://www.forbes.com/sites/tanyamohn/2014/07/07/new-ignition-interlock-legislation-aims-to-save-thousands-from-drunk-driving-deaths/>

**THANK YOU!**

**For your service to the State of Texas and your commitment to traffic safety. We look forward to seeing you in 2014-15!**