

# DWI Bond Conditions

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## Resources

- Statutes website:  
<http://www.statutes.legis.state.tx.us/>
- TJCTC Website: <http://www.tjctc.org/>
  - Magistration Deskbook
  - DWI Magistration & Inquest Guide
  - Traffic Safety Initiative Page: <http://www.tjctc.org/tjctc-resources/traffic-safety-initiative.html>
  - Newsletters and Other Publications
  - Webinars
  - Legal Board

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# Scope of the Problem

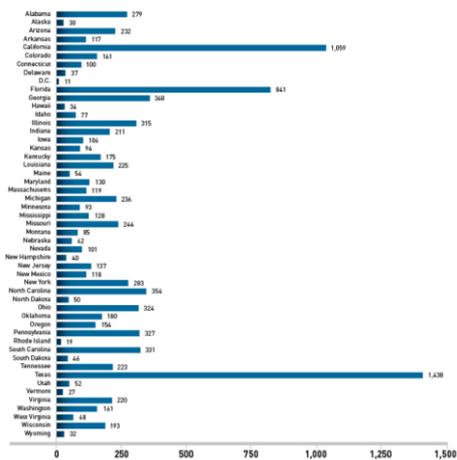
- In 2013, 1,089 people died in alcohol-related crashes in Texas; this represents 32.2% of all Texas traffic fatalities.
- In 2014, 1,041 people died in alcohol-related motor vehicle crashes in Texas, accounting for 29% of all Texas traffic fatalities.
- In 2015, 960 traffic deaths in Texas were alcohol related – 27% of all traffic fatalities
- In 2016, 987 traffic deaths in Texas were alcohol related – 26% of all traffic fatalities
- In 2017, 1,046 traffic deaths in Texas were alcohol related – 28% of all traffic fatalities.

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# Scope of the Problem

Alcohol-Impaired Driving Fatality Data 2016

TEXAS



US TOTAL 10,497

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## Mandatory Release on Set Bond Amount

- When arrested without a warrant:
  - **Felony:** If a magistrate has not determined probable cause w/i **48** hours  $\implies$  Must release on not more than **\$10k** bond (or personal bond if can't obtain surety/cash bond)
  - **Misdemeanor:** If a magistrate has not determined probable cause w/i **24** hours  $\implies$  Must release on not more than **\$5k** bond (or personal bond if can't obtain surety/cash bond)

-- Art. 15.17, 17.033, CCP

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## Setting Bail

- Considerations:
  - Sufficiently high to give reasonable assurance of compliance
  - Not an instrument of oppression
  - Nature and circumstances of the offense
  - Ability to make bail (and proof may be taken)
  - Future safety of the alleged victim and the community
- Types: Surety vs. Cash vs. Personal vs. PR
  - Good bond conditions are more effective than high bail amounts for ensuring compliance/public safety.

-- Art. 17.15, CCP

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## Importance of Bond Conditions

- There can be a long time between arrest and trial.
  - Delays in getting drug test results back have led to even longer delays.
- Bond conditions are critical in protecting public safety during the interim.

-- Art. 17.40, CCP

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## What About License Suspension?

- Doesn't a person's driver's license get suspended if he or she is arrested for DWI?
- So why do we need bond conditions?
- Won't license suspension reduce the number of DWI offenses?

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## License Suspension

- A person's driver's license will be suspended by DPS if:
  - The person arrested for DWI refuses to provide a breath or blood sample;
  - The person arrested for DWI provides a breath or blood sample with a BAC over .08; or
  - The person is convicted of DWI

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## Retaining License

- A person whose license is suspended by DPS prior to conviction may retain his or her license by winning an Administrative License Revocation hearing.
  - Many defense lawyers use ALR hearings to preview the trial or elicit testimony designed to "catch" the arresting officer in inconsistent statements at trial.
  - Prosecutors may therefore advise peace officers not to attend ALR hearings. Failure to attend results in the licensee keeping his or her license.
- A person whose license was suspended may also obtain an ODL.

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## License Suspension – People Still Drive

- Even if a license remains suspended, statistics show that up to 75% of drivers will continue to drive on a suspended license.

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## License Suspension v. Bond Conditions

- **So license suspension alone is ineffective in reducing the incidence of DWI offenses.**
- Bond conditions (including IID) are necessary to protect public safety while the defendant's case is pending.

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## Setting Bond Conditions

- To secure a defendant's attendance at trial, a magistrate "may impose **any reasonable condition** of bond related to the safety of a victim of the alleged offense or to the safety of the community"
  - All magistrates are required by Texas law to: "preserve the peace within [their] jurisdiction by the use of all lawful means." -- Art. 2.10, CCP
  - Bond conditions may not be used as punishment.

-- Art. 17.40, CCP

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### Which of the following bond conditions would be a "reasonable condition" for a DWI?

1. Defendant must submit to and pay for drug testing.
2. Defendant must attend alcohol or substance abuse counseling.
3. Defendant must install an ignition interlock device.
4. Defendant must abstain from alcohol.
5. Any of the above.

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## Mandatory Condition: Ignition Interlock Device (IID)

- IF the defendant is charged with any of the following Penal Code offenses, the magistrate SHALL order the defendant to install an IID AND not operate any motor vehicle unless it is equipped with an IID:

An offense of:	A SUBSEQUENT offense of:
Intoxication Assault (PC 49.07)	DWI (PC 49.04)
Intoxication Manslaughter (PC 49.08)	Flying WI (PC 49.05)
DWI w/ Child Passenger (PC 49.045)	Boating WI (PC 49.06)

- Unless magistrate finds it's not in the best interest of justice to require the device. (ex: if another type of device is ordered)  
-- Art. 17.441, CCP

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## IID Condition: Installation Deadline

- If the defendant is required to have the device installed, the magistrate shall require that the defendant have the device installed on the appropriate motor vehicle, at the defendant's expense, before the 30<sup>th</sup> day after the date the defendant is released on bond.

-- Art. 17.441(c), CCP

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## IID Condition: Best Practices

- You could also include a bond condition requiring the defendant to abstain from alcohol.
- If this condition is included, high BACs detected by the IID will constitute a violation of bond conditions even if they don't drive.

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**So can a magistrate impose an IID condition even if it is not *mandatory*?**

1. Yes
2. No

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## Why is it a good idea to consider an IID condition in all DWI cases?

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### IID Conditions Reduce the Incidence of DWI

- NHTSA:
  - “Research shows that ignition interlocks are associated with substantial reductions in recidivism, ranging from 50 percent to 90 percent while the interlock is installed on the vehicle.”
  - “Research studies demonstrate that ignition interlocks are effective for both first-time and repeat DWI offenders.
  - Conclusion: **Requiring interlock devices saves lives.**

-- Voas & Marques, 2003; Willis et al., 2005; Vezina, 2002; Tippetts & Voas, 1997; Coben & Larkin, 1999.

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## New Mexico Study Findings

- Interlocks are the most effective DWI sanction. 99.993% of Interlocked Days are No-DWI days.
- Interlocks are the most overall cost-effective sanction. The cost is about \$2.50/day, paid by the offender.
- Interlocks are perceived as fair by 85% of offenders.
- 70% less recidivism than license revocation
- Interlocks are paid for by offenders.
- Interlocks supply 24/7 supervision.

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## IID Monitoring

- The magistrate **may** designate an appropriate agency to verify the installation of the device and to monitor the device.
  - Defendant must pay a fee to the agency
  - The magistrate shall set the fee in an amount not to exceed \$10 as determined by the county auditor or by the commissioners court

-- Art. 17.441(d), CCP

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## Monitoring Agencies

- Probation department (C.S.C.D.)
  - May collect a separate administrative fee of between \$25 and \$60 per month for providing monitoring services- should be set by CSCD and NOT the magistrate.
    - Govt. Code § 76.015
- County Attorney's Office
- District Attorney's Office
- County Sheriff's Office
- Court before which the prosecution is pending

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## Interlock Monitoring

- Interlock providers (SmartStart, Guardian, LifeSafer) are not monitoring agencies but provide reports to the monitoring agencies
  - Certified Texas IID Service Centers: <http://gato-docs.its.txstate.edu/jcr:1381e61e-4c31-4a1d-80e8-4cfdbd857861/iidServiceCenters.pdf>
- In order to be effective, bond conditions set by a magistrate must be monitored – someone needs to actually look at the interlock reports.

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<b>Sep 29, 2008 Mon</b>			
	4:33:09 PM	Initial Test-Pass	0.000
	4:33:37 PM	Engine Start	
	4:36:02 PM	Engine Stop	
	4:38:43 PM	Initial Test-Pass	0.000
	4:38:51 PM	Engine Start	
	4:59:31 PM	Skipped Rolling Retest	
	4:59:31 PM	Violation Lock Out	
	4:59:37 PM	Abort - Voice Tone	
	4:59:44 PM	Abort - Blow Pressure	
	5:00:36 PM	Rolling Retest-Pass	0.000
	5:41:44 PM	Engine Stop	
	5:46:37 PM	Initial Test-Pass	0.000
	5:46:46 PM	Engine Start	
	5:48:18 PM	Engine Stop	
<b>Sep 30, 2008 Tue</b>			
	11:04:12 AM	Initial Test-Pass	0.000
	11:04:20 AM	Engine Start	
	11:06:04 AM	Engine Stop	
	11:12:51 AM	Initial Test-Warn	0.021
	11:12:59 AM	Engine Start	
	11:14:39 AM	Engine Stop	
<b>Smart Start's official interpretation of this client's data is as follows:</b>			
<b>VIOLATION:</b> There was a failed retest while the engine was running and a passing test was not provided before the engine was turned off. This indicates alcohol was present on the users breath while the vehicle was running.			
Sep 6,2008	Sat 04:43:56 PM	Initial Test-Pass	0.000
Sep 6,2008	Sat 04:44:32 PM	Engine Start	
Sep 6,2008	Sat 04:56:12 PM	Rolling Retest-Fail	0.045
Sep 6,2008	Sat 04:58:48 PM	Skipped Rolling Retest	
Sep 6,2008	Sat 04:59:54 PM	Rolling Retest-Violation	0.052
Sep 6,2008	Sat 04:59:54 PM	Skipped Rolling Retest	
Sep 6,2008	Sat 05:02:48 PM	Rolling Retest-Violation	0.051
Sep 6,2008	Sat 05:02:48 PM	Skipped Rolling Retest	
Sep 6,2008	Sat 05:17:58 PM	Engine Stop	

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<b>Smart Start's official interpretation of this client's data is as follows:</b>			
<b>CAUTION:</b> Power to the device was disconnected for the length of time and dates shown below. These disconnects may indicate tampering unless they were done while the vehicle was in for repair. The monitoring authority may want to request a copy of any vehicle service receipt from the client on disconnects of several hours or more before determining if a violation occurred.			
Sep 24,2008	Wed 01:06:01 PM	Power Fail	
Sep 27,2008	Sat 10:09:30 AM	Disconnected Head	Hours:Minutes - 69:3
<hr/>			
<b>CAUTION:</b> There were 51 engine starts during the reporting period which is lower than average. This means the vehicle is not being driven on a regular basis and MAY indicate another non-interlock equipped vehicle is being used.			
<hr/>			
SmartStart is introducing new reports to make you aware of installations, clients who do not show up for installation, and clients who do not return for service (lockouts). For more information about these reports call your SmartStart customer care representative at 800-880-3394.			
Reports are available via web, e-mail, or fax. Please call us at 800-880-3394 so you can receive reports the next business morning after clients are serviced. Visit SmartWeb at <a href="http://www.smartstartinc.com">www.smartstartinc.com</a> .			

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## Monitoring Other Bond Conditions

- Other bond conditions which a magistrate/court may wish to monitor include:
  - Attending alcohol/drug counseling or substance abuse treatment;
  - Abstinence from alcohol and controlled substances;
  - Home curfew;
  - Alcohol/controlled substance testing;

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## Responsibility for Monitoring Bond Conditions

- When formal charges are filed in a trial court, responsibility shifts from the magistrate who originally set the conditions to the judge of the trial court.
- Example:
  - A justice of the peace requires the defendant to install an ignition interlock device within 30 days. Formal charges are filed in a county court 20 days later.
  - It is now the county court's responsibility to monitor/enforce this bond condition.

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## Modifying Bond Conditions

- A magistrate may modify until the case is filed in the trial court.
- Once filed in the trial court, the trial court judge may alter the bond conditions originally set by the magistrate.
- Example:
  - A magistrate does not require the defendant to install an ignition interlock device as a condition of bond following an arrest for a first time DWI.
  - After an indictment is returned in district court, the district judge may add this bond condition.

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## Violation of Bond Conditions

- What happens if you learn that a bond condition has been violated?
  - If the judge or magistrate in whose court the action is pending finds that the bond is defective, excessive, or insufficient in amount, or that any sureties are unacceptable, **or for any other good and sufficient cause** –
  - The judge or magistrate may order the accused to be re-arrested and require the accused to give another bond in such amount as the judge or magistrate may deem proper.
    - Can try issuing summons first before issuing arrest warrant

-- Art. 17.09, Sec. 3, CCP

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## Violation of Bond Conditions

- The magistrate may revoke the defendant's bond for violating a condition of bond only if the magistrate finds by a preponderance of the evidence that the violation occurred.
- If the magistrate finds that the violation occurred, the magistrate **shall** revoke the defendant's bond and order that the defendant be immediately returned to custody.

-- Art. 17.40, CCP

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**Does due process require that the court or magistrate hold a hearing before the defendant's bond may be revoked for violating a bond condition?**

1. Yes
2. No

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## Is a Bond Revocation Hearing Required?

- Definitely required if potential revocation is for violation of a bond condition
  - The hearing is how the court determines if it finds by a preponderance of the evidence that the violation occurred.
- TJCTC's Position: The magistrate or trial court with jurisdiction over the criminal prosecution should **always** provide notice to all parties and hold a hearing before issuing an order revoking the defendant's bond (for any reason).

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## Who Holds Bond Revocation Hearing?

- If a formal charging instrument has not yet been filed in a trial court
  - Magistrate who set the bond conditions
- Once a formal charging instrument has been filed
  - Trial court

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## How is Bond Revocation Hearing Initiated?

- Motion from prosecutor?
- Motion from monitoring agency?
- Court's own motion?
- TJCTC's Position: Any of these methods is sufficient to initiate bond revocation proceedings.

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## Who Should Be Present at Bond Revocation Hearing?

- Prosecutor?
- Defendant?
- Monitoring agency?
- TJCTC's Position:
  - An attorney representing the state, the defendant, and the defendant's attorney should all be present at the hearing.
  - The monitoring agency's presence is not required, but it will likely serve as a witness for the state.

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## Rules of Evidence at Bond Revocation Hearing

- Rules of Evidence apply to hearings to deny, revoke, or increase bail.

-- Rule 101, Texas Rules of Evidence

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**Once a DWI case has been filed in the trial court, either the trial court judge or the magistrate that set the bond can revoke the defendant's bond.**

1. True
2. False

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## Consistency in Bond Conditions

- Consistency (within counties and across the state) in setting bond conditions and in monitoring/enforcement promotes fairness, efficiency, and predictability for:
  - Defendants
  - Prosecutors
  - Monitoring Agencies
  - Court staff

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## Consistency in Bond Conditions

- Bond conditions should not be identical in every DWI case, but bond conditions should not differ widely from case to case either.
- Frequent changes to bond conditions result in an uncertain and unpredictable system for defendants, prosecutors, and court staff.
- So it is better if magistrates and trial court judges are on the same page, to avoid unnecessary modifications when cases shift from one to the other.

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## TJCTC's DWI Bond Condition Program

- The program is funded by a traffic safety grant from the Texas Department of Transportation and administered by the Texas Justice Court Training Center.

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## TJCTC's DWI Bond Condition Program

- Under this program, the county adopts a comprehensive plan for setting, monitoring, and enforcing bond conditions in DWI cases.
- Goal of the program is to get all county officials on the same page concerning:
  - Mandatory bond conditions
  - Permissive bond conditions
  - Monitoring of bond conditions
  - Communication concerning bond conditions

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## TJCTC's DWI Bond Condition Program

- TJCTC will work with you and other magistrates in your county to develop a coordinated program for setting bond conditions in DWI cases
- TJCTC will produce forms to be used by county magistrates who perform Art. 15.17 hearings
- If you are interested, contact Randy Sarosdy or Rebecca Glisan for more information.
  - Contact info can be found here:  
<http://www.tjctc.org/contact-us.html>