



TEXAS JUSTICE COURT TRAINING CENTER

TRAFFIC SAFETY INITIATIVE NEWSLETTER

April 2016

COURTS TO LAW ENFORCEMENT: GET A BLOOD SEARCH WARRANT BEFORE DRAWING BLOOD

BY RANDALL L. SAROSDY

Consider the following scenario: Officer Jason Bourne observes the car driven by James Smith swerving in and out of his traffic lane and pulls Smith over. Bourne smells alcohol on Smith’s breath and notices that his speech is slurred. As part of his investigation he learns that Smith has two prior DWI convictions. Smith refuses to submit to the Standard Field Sobriety Test and refuses to provide a blood sample. He is arrested on a charge of DWI and taken to the county jail where Bourne asks a phlebotomist to take a blood sample without a warrant. Bourne relies on Transp. Code § 724.012(b)(3)(B) for the warrantless blood draw since Bourne has reasonable grounds to believe Smith was operating a motor vehicle while intoxicated and at the time of the arrest Bourne received reliable information from a credible source that Smith had been previously convicted of DWI on two or more occasions. The blood sample shows a BAC of .18. But will that evidence be admissible at trial? Recent cases hold that it will not be, despite the fact that it was authorized under the Transportation Code. The likely suppression of evidence obtained through a warrantless blood draw means that in most cases an officer should have a properly issued blood search warrant before taking a nonconsensual blood sample from a DWI suspect. Justices of the Peace are authorized to issue blood search

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GREETINGS FROM THE TRAINING CENTER

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 in association with Texas State University and the Justices of the Peace and Constables Association.

Under the leadership of our new Executive Director, Thea Whalen, the Texas Justice Court Training Center is pleased to have this opportunity to bring all justices of the peace, constables, and court personnel up to date on the program's ongoing plans during the current year and to provide information concerning recent developments in traffic safety.

During the current academic year the Training Center is continuing to provide training on traffic safety issues at all 20 hour justice of the peace seminars, all 16 hour court personnel seminars, and at 10 hour workshops on Criminal and Traffic Law (Corpus Christi) and Magistration (College Station). Our education for judges has focused on occupational licenses and magistrate duties relating to DWI offenses, while our education for clerks has focused on occupational licenses and properly processing alcohol cases involving minors.

Thanks to the outstanding support of TxDot we will again be able to co-sponsor an Impaired Driving Symposium on DWI-related issues along with the Texas Association of Counties, the Texas Center for the Judiciary, and the Texas Municipal Courts Education Center. As with last year's Symposium this program will include justices of the peace, municipal court judges, county judges, county court at law judges and district judges.

We are continuing to expand our efforts to improve the effectiveness of bond conditions in DWI cases through the DWI Bond Schematic (or Uniform Bond Condition) Program. We describe the nature and benefits of this program in an article on page 8. If your county wishes to participate in the program, simply fill out the enrollment form located on the TJCTC website. Please do not hesitate to contact us if you have any questions regarding the program.

We also offer articles on recent developments in: (1) the case law concerning the need for a search warrant prior to a mandatory blood draw even if taken under the Mandatory Blood Draw Statute; and (2) legislation affecting the issuance of an occupational license where the applicant is subject to an order requiring an ignition interlock device. From an outside source we include an article concerning Uber's claim that its ridesharing service has reduced drunk driving. We hope you find these articles to be helpful and instructive.

We look forward to seeing you at TJCTC programs during the remainder of 2015-16 and greatly appreciate your comments and suggestions for areas of further judicial education relating to traffic safety matters.



SEARCH WARRANTS BEFORE DRAWING BLOOD (CONTINUED)

warrants in many counties and recent legislative changes facilitate that process.

The Implied Consent and Mandatory Blood Draw Statutes

Under the Texas Implied Consent statute, Transp. Code § 724.011, a person arrested for driving while intoxicated in Texas is deemed to have consented to the taking of one or more specimens of the person's breath or blood for analysis to determine the alcohol concentration or the presence of a controlled substance or drug in the person's body. The person has a statutory option to **refuse** to provide any such specimen, subject to certain penalties, including a possible driver's license suspension. Transp. Code §§ 724.013, 724.032. The length of the driver's license suspension is 180 days for first time offenders, and two years for some persons having another DWI arrest within the preceding five years. Transp. Code §§ 724.035. If the suspect is unconscious or otherwise incapable of withdrawing consent, a blood sample may be legally drawn from the suspect's body. Transp. Code § 724.014.



But Texas law also provides for certain exceptions to the right of a person to withdraw his implied consent and **requires** an officer to take a specimen of the person's breath or blood even if the person is conscious and refuses to provide a sample. This law is known as the Mandatory Blood Draw Statute. Transp. Code § 724.012. It requires an officer to take a breath or blood sample of a suspect whenever the officer reasonably believes that as a direct result of a DWI accident a person has died or will die; an individual other than the suspect has suffered serious bodily injury; or an individual other than the suspect has suffered bodily injury and has been transported to a hospital or other medical facility for medical treatment. Transp. Code § 724.012(b)(1). The statute also requires a mandatory breath or blood test if the officer arrests a person for an offense under Penal Code § 49.045, DWI with Child Passenger. Transp. Code § 724.012(b)(2). And the statute requires a mandatory breath or blood test if, at the time of the arrest, the officer possesses or receives reliable information from a credible source that the person has been previously convicted of or placed on community supervision for DWI with Child Passenger, Intoxication Assault, Intoxication Manslaughter or any two previous DWI cases. So basically, the Mandatory Blood Draw Statute requires a breath or blood specimen on any DWI which is a felony, or any person who has previously been convicted of a felony DWI or related charges of intoxication assault or intoxication manslaughter.

Relying on the authority and complying with the requirements of the Mandatory Blood Draw Statute, peace officers in Texas began taking blood samples from DWI suspects without first obtaining a blood search warrant from a judge or magistrate.

The Response of the Courts to Warrantless Blood Draws

Warrantless blood draws have been challenged at trial on the ground that the evidence obtained in this manner violates the suspect's fourth amendment right against an unreasonable search or seizure. Courts have been sympathetic to these challenges.

SEARCH WARRANTS BEFORE DRAWING BLOOD (CONTINUED)

In *Missouri v. McNeely*, 133 S. Ct. 1552, 1557-63, 1567-68 (2013), the United States Supreme Court held that in drunk-driving investigations the natural dissipation of alcohol in the bloodstream does not constitute an exigency in every case sufficient to justify conducting a blood test without a warrant. The Court held: “In those drunk-driving investigations where police officers can reasonably obtain a warrant before a blood sample can be drawn without significantly undermining the efficacy of the search, the Fourth Amendment mandates that they do so.” 133 S. Ct. at 1561. The Court recognized that the natural dissipation of alcohol in the blood may support a finding of exigency in a specific case, but it does not do so categorically in all cases, and whether a warrantless blood test is reasonable must be determined on a case by case basis after examining the totality of the circumstances. *Id.* at 1562.

The Texas Court of Criminal Appeals addressed the specific issues presented by the Texas Implied Consent and Mandatory Blood Draw Statutes in *State v. Villareal*, 475 S.W.3d 784 (Tex. Crim. App. 2014). In that case after stopping David Villareal for a traffic violation an officer observed a strong odor of alcohol, that Villareal was swaying back and forth and had red, watery eyes and slurred speech. The officer arrested Villareal on suspicion of DWI. Villareal refused to perform the Standard Field Sobriety Test and he refused to provide a blood specimen. After a criminal history check revealed that Villareal had several prior convictions for DWI, the officer had him taken to a hospital where blood was drawn over his objection as required by the Mandatory Blood Draw Statute, Transp. Code § 724.012(b)(3)(B). Villareal’s BAC was .16. 475 S.W.3d at 788. The trial court granted a motion to suppress this evidence and the 13th Court of Appeals affirmed.

The Court of Criminal Appeals affirmed the 13th Court of Appeals and held that “a nonconsensual search of a DWI suspect’s blood conducted pursuant to the mandatory-blood-draw and implied-consent provisions in the Transportation Code, when undertaken in the absence of a warrant or any applicable exception to the warrant requirement, violates the Fourth Amendment.” 475 S.W.3d at 815. The Court noted that the language of the Mandatory Blood Draw Statute “is silent as to whether a law-enforcement officer conducting a mandatory, non-consensual search of a DWI suspect’s blood is required to first seek a warrant.” *Id.* at 810. “To the extent the mandatory-blood-draw statute may be interpreted as authorizing a warrantless search that would violate a

defendant’s rights under the Fourth Amendment, it cannot do so.” *Id.* The Court therefore held that “the provisions in the Transportation Code do not, taken by themselves, form a constitutionally valid alternative to the Fourth Amendment warrant requirement.” *Id.* at 813.

Under the authority of the Court of Criminal Appeals’ decision in *Villareal*, BAC evidence obtained as a result of warrantless blood draws taken without the consent of a DWI suspect under the Mandatory Blood Draw Statute has been suppressed in many recent cases. *See, e.g., State v. Jaimes*, 2016 WL 1211307 (Tex. App.—Austin, March 24, 2016, no pet. hist.) (not for publ.) (warrantless nonconsensual blood draw taken under Transp. Code § 724.012(b)(3) where defendant had two prior DWI convictions); *State v. Simpson*, 2016 WL 1317964 (Tex. App.—Austin, March 31, 2016, no pet. hist.) (not for publ.) (same); *State v. Cuba*, 2016 WL 1211361 (Tex. App.—Austin, March 25, 2016, no pet. hist.) (not for publ.) (defendant had two prior DWI convictions and caused an accident involving bodily injury to another person who was taken to a hospital; warrantless nonconsensual blood draw taken under Transp. Code § 724.012(b)(1)(C) and (b)(3)(B)); *State v. Sanchez*, 2016 WL 1190145 (Tex. App.—Austin, March 24, 2016, no pet. hist.) (not for publ.) (warrantless nonconsensual blood draw taken under Transp. Code § 724.012(b)(3) where defendant had two prior DWI convictions); *State v. Garcia*, 457 S.W.3d 546 (Tex. App.—San Antonio 2015, no pet.) (same); *Perez v. State*, 464 S.W.3d 34 (Tex. App.—Houston [1st Dist.] 2015, pet. ref’d) (same); *State v. Esher*, 2015 WL 4527715 (Tex. App.—Dallas, July 27, 2015, no pet.) (not for publ.) (driver of other vehicle injured and taken to hospital; warrantless nonconsensual blood draw taken under Transp. Code § 724.012(b)(1)(C)). [See also 17 Travis DWI cases in jeopardy on Page A1 of Sunday, March 27, 2016 issue of Austin American Statesman](#)

May I Issue a Blood Search Warrant?

Texas courts have now clearly held that the Implied Consent and Mandatory Blood Draw Statutes do not eliminate the need to obtain a search warrant in most cases before obtaining a nonconsensual blood sample from a person suspected of DWI. Law enforcement officers will therefore need to apply for blood search warrants

SEARCH WARRANTS BEFORE DRAWING BLOOD (CONTINUED)

in most DWI cases where the suspect has refused to consent to having a blood sample taken. So it's helpful to know whether or not you are a judge who may issue a blood search warrant.

The answer to that question depends on (1) whether or not you are a licensed attorney and (2) the county you live in. A justice of the peace, acting as a magistrate, who is an attorney licensed by the State of Texas is authorized to issue a blood search warrant in any county. Art. 18.01(j), Code of Criminal Procedure. A justice of the peace, acting as a magistrate, who is not an attorney is authorized to issue a blood search warrant if he or she holds office in a county that does not have a judge of a municipal court of record who is an attorney licensed by the state, a judge of a county court who is an attorney licensed by the state, or a judge of a statutory county court (i.e. a county court at law). Art. 18.01(i), Code of Criminal Procedure. Therefore, if you hold office in a county that does not have a municipal court of record with a judge who is a licensed attorney, a county judge who is a licensed attorney or a county court at law, then you may issue a blood search warrant to collect a blood sample from a person who is arrested for a DWI offense and refuses to submit to a breath or blood test.

Recent Changes Facilitate Issuance of a Search Warrant

In the 84th (2015) Legislative Session, the Texas Legislature passed H.B. 326 to facilitate the issuance of search warrants, including blood search warrants. The new law, codified in Art. 18.01(b-1), Code of Criminal Procedure, permits a magistrate to consider information communicated by telephone or other reliable electronic means (e.g. scanning and emailing a document) in determining whether to issue a search warrant. The magistrate may examine both the applicant who is requesting the search warrant and any person on whose testimony the application is based, but the applicant or the person must be placed under oath before the examination. Art. 18.01(b-1)(1).

If the applicant for the search warrant attests to the contents of an affidavit submitted by electronic means, the magistrate must acknowledge the attestation in writing on the affidavit. If he considers additional testimony or exhibits, then he must: ensure that the testimony is recorded verbatim by an electronic recording device, a court reporter or in writing; ensure that any recording or reporter's notes are transcribed and the transcript is certified as accurate and preserved; sign, certify the accuracy of and preserve any other written record; and ensure the exhibits are preserved. Art. 18.01(b-1)(2).

If the applicant for a search warrant submits information to the magistrate in this manner, then he has to prepare a proposed duplicate original of the warrant and either read or transmit its contents to the magistrate. The magistrate must then enter the contents of the proposed duplicate original warrant that are read to him into the original warrant, but if the contents are transmitted to him by electronic means, then the transmission received by the magistrate may serve as the original search warrant. Art. 18.01(b-1)(3).

The magistrate may also modify a search warrant that is submitted to him in the manner described in the preceding paragraph. If he modifies the warrant, he must transmit the modified version by reliable electronic means or file the modified original and direct the applicant to modify the proposed duplicate original. Art. 18.01(b-1)(4).

TRAFFIC SAFETY WEBSITES

<http://www.nhtsa.gov/Impaired>

National Highway Traffic Safety Administration Impaired Driving Website

<http://ttj.tamu.edu/group/cts/>

Texas Transportation Institute Center for Traffic Safety

<http://www.ncg.org/Pages/Home.aspx>

National Safety Council

<http://www.texastrafticsafetycoalition.com/>

Texas Traffic Safety Coalition

<http://www.tjctc.org/traffic-safety-initiative.html>

TJCTC Traffic Safety Initiative

<https://www.txdot.gov/apps/eGrants/eGrantsHelp/Reports/TexasTrafficSafetyAnnualReport-2015.pdf>

Texas Department of Transportation

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OCCUPATIONAL LICENSES AND IGNITION INTERLOCK DEVICES: RECENT CHANGES

By Randall L. Sarosdy

A person who applies for an occupational driver's license may already be subject to an order requiring an ignition interlock device to be installed on any car the person owns or operates. The most common situation for an application filed in a justice court is for a person who has been charged with a DWI offense and an ignition interlock device was ordered as a bond condition for the person's release from custody pending trial. If the person failed a breath or blood test (i.e. his BAC was over .08) or refused to take a test, then his driver's license has been suspended by DPS. He may apply to a justice court for an occupational license under Transp. Code § 521.241. At the time he applies for the occupational license he may be required by the bond condition to have an interlock device installed on all cars he owns or operates.

Another possible scenario is where a person has been convicted of a DWI offense and is required to install an ignition interlock device following a period of license suspension. If that person's license is then suspended by DPS administratively (for example, due to failure to pay surcharges or as a habitual violator of traffic laws), then the person may apply to a justice court for an occupational license. Again, in this situation the applicant will already be subject to an order requiring him to have an interlock device on any car he owns or operates.

As a result of H.B. 2246 in the 84th (2015) Legislative Session, an applicant for an occupational license who is subject to an ignition interlock order is treated differently from other applicants in three respects.

First, "[a] person who is restricted to the operation of a motor vehicle equipped with an ignition interlock device may not be subject to any time of travel, reason for travel, or location of travel restrictions. . . ." Transp. Code § 521.248(d). By contrast, an order granting an occupational license for other applicants must specify the hours of the day and the days of the week during which a person may operate the vehicle, the reasons for which the person may operate the vehicle and the areas or routes of travel permitted. Transp. Code § 521.248(a). In addition, a person not subject to an interlock restriction may not operate the vehicle for more than four hours in a 24-hour period unless, upon a showing of necessity, the court extends the hours up to no more than 12 hours in a 24-hour period. Transp. Code § 521.248(b). None of these time or travel restrictions may be imposed on a person who is granted an occupational driver's license if the person is subject to an order requiring an ignition interlock device on all vehicles the person owns or operates. The court's order granting the occupational license does need to state, however, that the person is restricted to the operation of a vehicle equipped with an ignition interlock device. Transp. Code § 521.248(b)(4).

Second, a person who is granted an occupational license after submitting proof that the person has an ignition interlock device installed on each motor vehicle owned or operated by the person may not be ordered to submit to the

REMAINING 2015-2016 TJCTC TRAINING SCHEDULE

20 HOUR JUSTICE OF THEPEACE SEMINARS

May 15-18: Rockwall
May 31-June 3: Lubbock

16 HOUR COURT PERSONNEL SEMINARS

May 2-4: San Marcos
June 15-17: Austin
July 13-15: Rockwall

10 HOUR WORKSHOPS

June 8-10: Irving
July 21-22: College Station
August 9-10: Tyler

IMPAIRED DRIVING SYMPOSIUM

August 4-5: Austin

DWI SUMMITT

June 16: Longview

TRAFFIC SAFETY WEBINARS

August 17: DWI Bond
Conditions
May 26 & June 1: BAC and
Toxicology Re-
porting Webinar

Uber Claims Credit for Drop in Drunk Driving Accidents. But Where's the Evidence?

The ridesharing service published a report last week with Mothers Against Drunk Driving connecting the rise of Uber to a drop in drunk driving accidents. Except the connection isn't so clear.

Last week Uber revealed another way the ridesharing service is revolutionizing travel: Cities that use Uber see a reduction in drunk driving accidents among young people, [a company report](#) showed.

"When empowered with more transportation options like Uber, people are making better choices that save lives," the company [declared](#).

David Plouffe – President Obama's former campaign manager who is now filling the [same role](#) for Uber – emailed millions of users to share the astounding news. "Since we launched uberX in California, drunk-driving crashes decreased by 60 per month for drivers under 30," Plouffe wrote. "That's 1,800 crashes likely prevented over the past 2 ½ years."

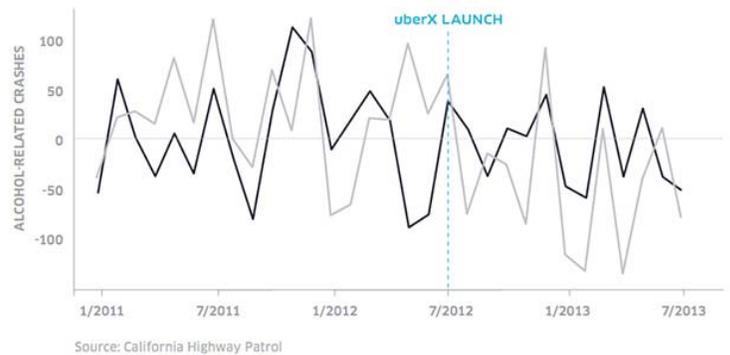
What is Uber's evidence that they "likely prevented" so many crashes?

Not much.

Indeed, Mothers Against Drunk Driving, which co-authored the report, cautioned us against connecting the rise of Uber to a drop in drunk driving. "Nobody is saying that there is a causation relationship here, this is a correlation relationship. Purely correlational," said Amy George, senior vice president of marketing and communications for MADD. (MADD took a less cautious stance in a [press release](#) last week: [New Report from MADD, Uber Reveals Ridesharing Services Important Innovation to Reduce Drunk Driving](#).)

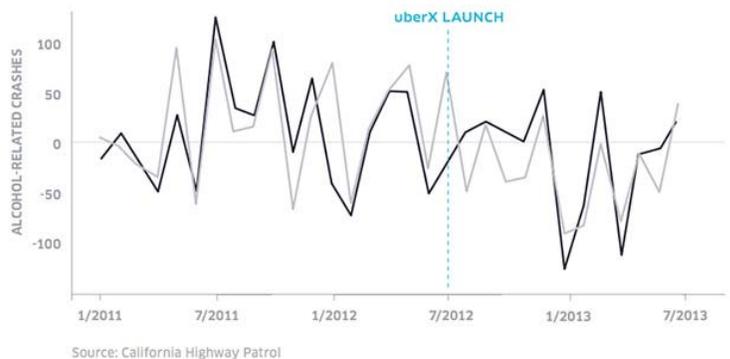
Uber's report has two key graphics: The first shows alcohol-involved crashes in California markets where Uber operates. The second shows the same, but in cities where there is no Uber service. Each graph compares accidents between under-30 and 30-and-over drivers. The charts actually show, in general, a downward trend of drunk driving accidents in both Uber and non-Uber markets.

California: Alcohol-Related Crashes in Markets Where Uber Operates



Darker line is 30 and over, lighter line is under 30. (Source: Report co-authored by Uber, MADD)

California: Alcohol-Related Crashes in Markets Where Uber Does Not Operate



Darker line is 30 and over, lighter line is under 30. (Source: Report co-authored by Uber, MADD)

IMPROVING BOND CONDITIONS IN DWI CASES THROUGH THE TEXAS DWI BOND SCHEMATIC PROGRAM

The DWI Bond Schematic (or Uniform Bond Condition) Program is part of a statewide plan to reduce the incidence of DWI offenses in Texas by assisting Texas counties in adopting a comprehensive plan for setting bond conditions in DWI cases. TJCTC views this program as an important step in reducing the number of DWI drivers on Texas roads and highways, thereby improving public safety throughout the state.

TJCTC will work with all criminal magistrates (including justices of the peace), local prosecutors, and potential monitoring agencies in each county that elects to participate in the program in order to create forms specific to that county to be used in administering the program. These forms may be based on TJCTC's Universal DWI Bond Schematic (available at www.tjctc.org) or forms that a county currently uses in setting bond conditions. Forms will be modified to meet the bond conditions that county officials agree are appropriate in DWI cases.

The program: provides county officials with an opportunity to develop a system for setting, monitoring, and enforcing DWI bond conditions to ensure community safety and protect victims; increases consistency in setting bond conditions by a magistrate and a trial court; promotes the use of bond conditions (such as ignition interlock devices) that reduce the incidence of DWI recidivism; and ensures that bond conditions required by law are set, monitored and enforced.

The program is administered by the Texas Justice Court Training Center Traffic Safety Initiative through funding provided by the Texas Department of Transportation. If you would like further information concerning the program, please feel free to contact Randall L. Sarosdy at rs52@txstate.edu.

SEARCH WARRANTS BEFORE DRAWING BLOOD (CONTINUED)

If the magistrate issues a search warrant where the information was provided to him by telephone or reliable electronic means, then he must sign the original documents, enter the date and time of issuance on the warrant and transmit the warrant by reliable electronic means to the applicant or direct the applicant to sign the judge's name and enter the date and time on the duplicate original. Art. 18.01(b-1)(5).

These procedures allow a peace officer to obtain a search warrant, including a blood search warrant, promptly and without having to go to the location of the magistrate (or vice versa) or meet with the magistrate face to face. The application and other information may be transmitted by email or fax or by scanning a document and transmitting it by email. The magistrate may even allow the officer to sign his or her name! Modifications may be made to the original warrant based upon the magistrate's examination of the applicant or a person on whose testimony the application is based, and he may then transmit the modified version to the applicant by fax or by scanning and emailing it. Clearly, these procedures may expedite the process by which a peace officer may obtain a blood search warrant for a person arrested for DWI and for whom a blood sample is required under the Mandatory Blood Draw Statute where the person refuses to submit to one.

Conclusion

Texas courts have now clearly held that a blood search warrant is required in most cases where a DWI suspect is subject to the Mandatory Blood Draw Statute. Justices of the Peace, acting as magistrates, are authorized to issue blood search warrants in many counties in Texas. Recent legislative changes should facilitate and expedite the issuance of a blood search warrant in DWI cases in which the suspect refuses to consent to a breath or blood sample.

Uber Claims... (Continued)

But Uber and Plouffe are hanging their assertion on another facet of the analysis: drunk driving crashes for those under 30 have dropped more in cities that have Uber versus those that don't.

We believe there is a direct relationship between the presence of uberX (Uber's lowest-cost option) in a city and the amount of drunk driving crashes involving younger populations," the report says.

That could be. But we don't really know, and neither does Uber.

Uber does not provide evidence in its report that Uber users and those under 30 are the same population. A methodology shared with us by Uber asserts that their users are generally younger and more technologically savvy. MADD's George said they sent the data analysis to an outside research group for extra vetting. She declined to name the group because they were not formally part of the report.

Michael Amodeo, an Uber spokesperson, sent us a statement in response to questions about the analysis:

"We believe the results of the study are an encouraging step in the right direction and provide evidence that ridesharing services like Uber are making a meaningful and positive impact on mindsets and the rate of drunk driving. We attempt to deal with other factors in our study by breaking out the under 30 and over 30 groups, and we're comparing them against each other."

Uber's report credits [an analysis by Nate Good](#), who is chief technology officer for an online ticketing company as well as an amateur statistician and self-described ridesharing proponent. Uber's report reads: "Inspired by Nate Good's analysis—which demonstrated a clear downward trend in alcohol-related crashes in Pennsylvania's youngest cohort once ridesharing was available—we decided to replicate that study in California at large using data procured from the State."

However, Good's study had nothing to do with "alcohol-related crashes." Good analyzed DUI arrests. "That was a poor choice of words on Uber's part," Good told us.

Good was careful to note various caveats of his analysis. No 1 on his list: "Correlation does not equate to causation." No. 2: "I am a computer science professional and a data science enthusiast, but by no means a statistician."

Good said he attempted to analyze alcohol-involved crash data but could not find a reliable data source.

We've also reached out to Plouffe, but haven't heard back yet.

This article originally appeared on ProPublica by Ryann Grochowski Jones. To view the article online, please visit the link below.

<https://www.propublica.org/article/uber-claims-credit-for-drop-in-drunk-driving-accidents-but-where-evidence>

supervision of the local community supervision and corrections department unless the order is entered by a court of record. Transp. Code § 521.251(d-1). By contrast, a justice court granting an occupational license for other persons may order the person to submit to supervision by the local community supervision and corrections department to verify compliance with the conditions specified by the order. Transp. Code § 521.2462(a). The court may require the person to pay a monthly administrative fee for the supervision. But supervision may no longer be ordered if the applicant proves that he has an ignition interlock device installed on each vehicle he owns or operates.

Third, if an applicant for an occupational license submits proof that he has an ignition interlock device installed on each motor vehicle he owns or operates, then the order granting the occupational license is effective immediately, despite the person's criminal record history. Transp. Code § 521.251(d-1). For other persons an order granting an occupational license may not take effect before the 91st day after the effective date of the license suspension, the 181st day after the effective date of the license suspension, or the first anniversary of the effective date of the license suspension, depending on the person's criminal record history. Transp. Code § 521.251(b),(c) and (d). These potential delays in the effective date of an order granting an occupational license no longer apply to a person who has an ignition interlock device installed on every vehicle the person owns or operates.



Why did the legislature make these changes, in effect easing the restrictions related to an occupational license for a person subject to an ignition interlock requirement? Presumably, this is in recognition of the effectiveness of ignition interlock devices in reducing recidivism among DWI offenders. As the National Highway Traffic Safety Administration has noted: "Research shows that interlocks reduce recidivism by 50 to 90%, while they are in use. They reduce the economic impact of drunk driving by \$3-7 for every \$1 spent. They are perceived as a fair sanction by more than 80% of offenders surveyed." NHTSA, *Ignition Interlock Institutes: Promoting the Use of Interlocks and Improvements to Interlock Programs*, at 8 (2013), available at this link: <file:///C:/Users/randys.JURIST/Desktop/Downloads/811815.pdf> According to NHTSA, research studies demonstrate that ignition interlocks are effective for both first-time and repeat DWI offenders. A New Mexico study has found that interlocks are the most effective DWI sanction: 99.993% of Interlocked Days are No-DWI days. Interlocks are also the most cost-effective sanction with the cost typically being about \$2.50 per day, paid by the offender. Interlocks are perceived as fair by most offenders and provide around the clock supervision. See <http://www.rothinterlock.org/welcome.htm> In H.B. 2246 the legislature recognized that if a person may drive only with an ignition interlock device, then the person's travel does not need to be subject to the same travel or time restrictions or the same monitoring requirements or limitations that would otherwise apply.

Keep in mind that a justice court may not impose an interlock restriction on an applicant for an occupational license who is not already subject to that restriction. Section 521.246, Transportation Code, does require a judge to restrict a person convicted of an offense under Sections 49.04-49.08, Penal Code, to the operation of a motor vehicle equipped with an ignition interlock device, but a justice court does not have jurisdiction over those offenses. But if an applicant for an occupational license is already subject to an ignition interlock order, then a justice court should be mindful of the special provisions discussed above that now apply to an order granting the occupational license.

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