

TEXAS JUSTICE COURT TRAINING CENTER

TRAFFIC SAFETY INITIATIVE NEWSLETTER
SEPTEMBER 2011

IN THIS ISSUE

Message from the Program
Attorney.....1

TJCTC Staff.....3

Budget and Oversight
Committee.....3

Texting While Driving.....4

The Breathalyzer Behind the
Wheel.....6

Skirting Interlock Laws.....8

A MESSAGE FROM TJCTC PROGRAM ATTORNEY ROB DANIEL

Hello, and welcome to the most recent edition of the Justice Court 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 and constables 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.

As many of you are aware, the Texas Justice Court Training Center recently promoted Bronson Tucker to General Counsel, and hired me to replace him as the Justice Court Traffic Safety Initiative program attorney in February of this year. Here's a little background on me, for those of you I have not had the

opportunity to meet yet. I am originally from Fort Worth, and I graduated from high school there in 1999. I attended Georgetown University, earning a bachelor's degree in history with a minor in Spanish, and moved back to Texas following graduation. After college, I had the opportunity to serve the citizens of Senate District 3 as a Texas Senate employee for a year before enrolling at the University of Texas School of Law in fall of 2004. After graduating and passing the Texas Bar Exam, I went to work for the Hale County District Attorney's Office for two and a half years before moving back to Austin and taking a job with the Texas Justice Court Training Center. I have been married to my wife Kathryn for just over three years. We don't have any children yet, but we have a fourteen year old Cairn Terrier

named Gabby, who we treat like one. When I'm not on the job, I enjoy playing tennis, reading, and travel. I am also an avid fan of the Georgetown University basketball team and the University of Texas football team.

Over the past eight months, I have enjoyed traveling throughout the State of Texas to speak to justices of the peace and court personnel regarding traffic safety issues. The most enjoyable part of this experience so far has been to get to know the men and women of justice courts throughout the state, who serve the citizens of Texas so diligently. I truly believe that justice courts are the hardest working courts in the state, thanks to your tireless efforts. Please keep up the great work, and we will continue to provide quality education and instruction regarding traffic safety issues.

During the 2010-2011 academic year, we provided eight six-hour seminars focusing on program areas throughout the state. In addition to our six-hour seminars, we provided education relating to program areas at all of our 16-hour court personnel seminars, as well as our 20-hour justice of the peace seminars. These seminars provided instruction on a range of topics, including distracted driving, alcohol offenses

involving minors (including DUI Minor), driving safety courses and deferred disposition under Chapter 45 of the Code of Criminal Procedure, magistrating DWI defendants, and DWI inquests. We were very pleased to be able to bring in outside speakers for some of our seminars to share their experience with you, including Texas Highway Patrol officers, medical examiners, and representatives from interlock-ignition device monitoring groups.

We would also like to announce that we have updated our DWI Magistration/Inquest Field Guide, which we will be distributing to all justices of the peace. The Field Guide is designed for you to have with you while performing your magistrate and inquest duties, and has charts, information, and resources to answer immediate questions you encounter in the field. Many of the updates are in response to significant legislative changes, such as a new requirement to magistrate defendants arrested on Motion to Revoke Probation warrants when the trial court judge is unavailable. We hope that you will find the contents of the field guide to be comprehensive and informative, and we welcome any feedback that you may have.

We are also pleased to report the update of our website completely dedicated to traffic safety initiatives. The website, located at <http://www.tjctc.org/Educational-Programs/Traffic-Safety.html>, will include copies of presentations and materials from last year's seminars, as links to traffic safety related articles and resources, a model DWI bond schematic, and other helpful material.

The ultimate goals of this program are to empower justices of the peace and court personnel to apply Texas law fairly and correctly, and to make a positive contribution to their counties and communities. By achieving these goals, we will help to make the state of Texas a leader in traffic safety. This is important to me, and I know it is important to all of you. Any feedback, whether positive or negative, helps us to make changes to improve the program. I am always available to hear your proposals for this program, and I welcome any suggestions any of you may have to help us achieve our shared goals.

Thank you again for your support of the Justice Court Traffic Safety Initiative, and for all you do to improve your communities and the State of Texas.

THE TEXAS JUSTICE COURT TRAINING CENTER 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

JANICE HARDAWAY
Program Administrator, Justices of the Peace

HEATHER HIDALGO
Program Administrator, Civil Process

AMANDA SHARP
Program Administrator, Court Personnel

LAURA VILLAREAL
Registrar

BUDGET AND OVERSIGHT COMMITTEE

CONSTABLE CHAD JORDAN
President, JPCA

THE HON. MARTIN CASTILLO
President-Elect, JPCA

CONSTABLE MICHAEL A. TRUITT
2nd Vice President, JPCA

THE HON. JANICE SONS
3rd Vice President, JPCA

THE HON. PHILLIP L. MONTGOMERY
Secretary/Treasurer, JPCA

THE HON. JIM HUMPHREY
Judge Advocate, JPCA

CONST. JIM ROBERTS
Sergeant-at-Arms, JPCA

THE HON. SUZAN THOMPSON
Chair, Court Personnel Education Committee

THE HON. JOHN CARSON
Chair, Justice of the Peace Education
Committee

THE HON. BOBBY GUTIERREZ
Chair, Constable Education Committee

THE HON. JACKIE MILLER
Past President, JPCA

TEXTING WHILE DRIVING: SHOULD IT BE REGULATED? WHAT CAN JUSTICE COURTS DO TO IMPROVE SAFETY?

By Rob Daniel

Program Attorney, Texas
Justice Court Training Center

One of the biggest news stories of this year's 82nd session of the Texas Legislature was Governor Rick Perry's veto of House Bill 242, which would have prohibited sending text messages, instant messages, and emails while driving a motor vehicle. Because our traffic safety presentations include material regarding distracted driving, we heard opinions from many of you regarding this issue. Many of you agreed with the text of Governor Perry's veto statement, which opined that "House Bill 242 is a government effort to micromanage the behavior of adults." Those of you who agreed with this sentiment often pointed out that the bill did not regulate other distracted driving activities, such as eating while driving or listening to the radio. Some of you disagreed with Governor Perry's statement, claiming that regulating texting while driving does not infringe on any significant right, and is no more meddlesome than seatbelt or DWI laws. Many who disagreed with Governor Perry also pointed out that

statistically speaking, texting while driving has increasingly contributed to motor vehicle accidents in Texas. Regardless of your opinion on HB 242, almost all of you agreed with another portion of Governor Perry's veto statement, which declared that "texting while driving is reckless and irresponsible."



The Texas Justice Court Training Center does not take political positions, and sees merit in the arguments of parties on both sides of this debate. We also agree with the Governor and almost all of you that regardless of whether Texas eventually decides to ban or not ban texting while driving, it is a reckless and irresponsible behavior. Therefore, we would like to take the time to discuss how you can help to educate citizens in your community regarding this issue, with the goal of improving traffic safety. Below are several ideas. Please feel

free to contact us to contribute additional thoughts.

1. Use the new driving safety course for young drivers. Senate Bill 1130, which takes effect on January 1, 2012, will allow justice courts to order defendants under the age of 25 to complete an additional driving safety course as a condition of deferred disposition. Specifically, SB 1330 requires that such courses be designed for drivers under 25 years of age, and provide instruction in the following areas: "(A) alcohol and drug awareness; (B) the traffic laws of this state; (C) the high rate of motor vehicle accidents and fatalities for drivers younger than 25 years of age; (D) the issues commonly associated with motor vehicle accidents involving drivers younger than 25 years of age, including poor decision-making, risk taking, impaired driving, **distraction**, speed, failure to use a safety belt, driving at night, failure to yield the right-of-way, and **using a wireless communication device while operating a vehicle**, and the role of peer pressure in those issues; (E) the effect of poor driver decision-making on the family, friends, school, and community of a driver younger than 25 years of age; and (F) the importance of taking control of potentially dangerous driving situations both as a driver and as a passenger."

2. *Be creative in your deferred disposition orders.* Additionally, we encourage you to always remember that Article 45.051 allows justice courts to include “any other reasonable condition” in a deferred disposition order. At our seminars, we regularly show informational videos on texting while driving, and encourage justice courts to require teens and young adults to view such videos as a term and condition of deferred disposition. Often, justice courts will also require defendants to write a report on such videos, or make a presentation to a school or community group. Additionally, if evidence presented at trial or at a hearing allows you to determine that a defendant’s traffic violation was caused in part or in whole by texting while driving, we believe your order may prohibit the defendant from texting while driving during the deferral period. Which creative terms and conditions of deferred disposition do you use in your court to help reduce texting while driving in your community?

3. *Get out and speak to your community.* Always remember that as a justice of the peace, you are a respected member of your community. Additionally, many of you have personal experiences regarding this issue. Some of you have performed

inquests that involved texting while driving. Others have spoken to defendants who received citations after committing traffic violations because they were texting while driving. Regardless of your experience, we know that statistically, texting while driving is present in all of our communities. Do not be afraid to share your knowledge, experience, and expertise with local schools, community groups, and individuals. Your voice can have a positive impact with regard to traffic safety.



There was some additional activity regarding texting while driving during the recent legislative session. House Bill 2466, which took effect September 1, 2011, prohibits any driver under the age of 18 from using a wireless communications device while operating a motor vehicle. That means no texting and driving and no talking on a cell phone for 15, 16, and 17 year old drivers in Texas. Please let us know your thoughts on the impact of this legislative change.

TRAFFIC SAFETY WEBSITES

<http://www.distraction.gov>

US Department of Transportation distracted driving website

<http://tti.tamu.edu/groups/cts/>

Texas Transportation Institute Center for Traffic Safety

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

National Highway Traffic Safety Administration

<http://www.txdot.gov/safety/tips/default.htm>

TxDOT Traffic Safety Tips

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

National Safety Council

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

Texas Traffic Safety Coalition

THE BREATHALYZER BEHIND THE WHEEL

By PHILIP J. COOK and
MAEVE E. GEARING
Durham, N.C.

HERE are two compelling facts about ignition-interlock devices for preventing drunk driving. One is that these devices are highly effective, despite the logical possibilities for bypassing them. The second is that they are rarely installed in the cars of people who have been known to drive while intoxicated.

People driving while intoxicated still cause about 13,000 deaths a year in the United States. And of the 1.4 million arrests made, one-third involve repeat offenders. The greatest potential of ignition interlocks is to reduce this recidivism.

These hand-held devices, typically attached to dashboards and connected to the ignition, use fuel-cell technology to measure the concentration of alcohol in a person's breath. Although they are made by various companies, all ignition interlocks conform to strict standards of accuracy set by the

National Highway Traffic Safety Administration. If too much alcohol is detected, the car will not start.

A person who has been drinking might naturally think of fooling the device by persuading a sober person to start the engine, but that is not enough to subvert the system, because the device requires breath samples while the person drives — at random intervals of five minutes to an hour. (At least one company is also integrating cameras with the interlocks to photograph the driver when he provides a breath sample.) The unit keeps a log of all tests, and it is sealed so that any attempts at tampering can be detected.

Ignition-interlock devices are not perfectly effective; a drunk can often borrow another car. But in one recent study they were found to reduce repeat drunk-driving offenses by 65 percent. If they were widely installed, the devices would save up to 750 lives a year, a recent National Highway Transportation Safety Administration report estimated.

The State of Texas requires repeat DWI offenders and individuals charged with intoxication assault or intoxication manslaughter to install ignition interlock devices on their vehicles as a condition of bond.

Because it is mandatory in some situations, requiring a defendant to install an IID as a condition of bond is common. It is also common to see such a condition imposed on first time DWI offenders in order to protect the safety of the community.

However, magistrates often do not designate an agency to verify that the defendant has installed the interlock device. Nor do they designate an agency to monitor the device. If you are not designating an agency, we ask you to consider the following two articles carefully. Ask yourself: what is the impact in my community if no agency monitors interlock bond conditions?

Many states have recognized their potential. Eight states now mandate that interlocks be installed in the cars of all drunk-driving offenders, and another 25 require them for repeat offenders or those whose blood-alcohol content was far higher than the legal limit. Still other states give judges the option to order interlock installation. But implementation of these measures has lagged.

Judges often fail to order installation, even when the law requires it. Offenders routinely ignore orders to get interlocks. And in areas where the installation is voluntary, few offenders install them. In 2007, only about 146,000 interlocks were in use.

Part of the problem is that many already overburdened courts may lack the resources to monitor compliance. Some states make driver's license renewal conditional on the installation of an ignition interlock, but there is often inadequate integration between courts and motor-vehicle departments. Finally, the cost of the interlocks discourages people from complying with court orders.

The price of renting and maintaining a unit is \$70 to \$100 a month, and installation can be another \$70 to \$175. These charges increase the

offender's temptation to simply drive without a license.

How can we get more drunk-driving offenders to use interlocks? Better oversight by, and coordination among, authorities would help, as would efforts to make the units less expensive. New Mexico, which has been a leader in interlock legislation, has created a special fund to help pay the cost for low-income people. This has the side benefit of helping judges overcome their reluctance to order the use of interlocks.

It is also important to link ignition interlocks to substance-abuse treatment. Currently, court orders simply specify that the units be installed for a fixed period of six months to two years, regardless of whether the person has shown progress in curbing his drinking problem. That helps explain why, as research has shown, the devices have no lasting effect on the likelihood that a person will be arrested for drunk driving again after the interlock order is lifted. Mandates for interlocks should be tied to requirements for substance-abuse treatment, and removal of the devices should not be allowed until the offender has gone for an extended period without trying to start his car after drinking.

The ignition interlock could be an extraordinarily effective way

to prevent drunk-driving recidivism. But it can save lives only if we make sure people use it.

Philip J. Cook, a professor of public policy at Duke University, is the author of "Paying the Tab." Maeve E. Gearing is a doctoral candidate in public policy at Duke. This article originally appeared in the op-ed section of the New York Times on August 31, 2009.

DRUNK DRIVERS SKIRTING LAW REQUIRING THEM TO DRIVE WITH BREATHALYZERS

By Kenneth Lovett
New York Daily News

ALBANY - Drunken drivers busted in New York City have found a way around a law requiring that breath-testing devices be placed in their cars before they drive again.

Under a part of Leandra's Law that went into effect last August, people convicted of drunken driving are required to have an ignition interlock device installed in their car for at least six months - or surrender their license.

But the latest data show that just 21% of convicted drunken drivers in the city had the device installed - less than half of the 44% interlock rate of offenders statewide.

"There is a problem with getting the people to install the devices," admitted Kevin Ryan, spokesman for the Queens district attorney's office, which, along with the probation department, monitors the program for the entire city.

A total of 2,562 drivers had been convicted of drunken driving as of Aug. 15 - a year after the law was instituted.

But only 528 of the busted drivers have installed devices in their cars, city records show.

City and state officials said the boozehounds have come up with a creative way around the rules: transferring the title of their vehicle to a friend or relative. Others have explained to authorities that they simply got rid of their vehicles.

"It's obviously very disappointing," said Senate Transportation Committee Chairman Charles Fuschillo (R-Nassau) who co-sponsored Leandra's Law. "Certainly, it wasn't the intent of the legislation."

Fuschillo blamed defense attorneys for advising clients on how to skirt the law. He's now working with Nassau County District Attorney Kathleen Rice to come up with legislation to close the loophole.

Fuschillo and Rice are mulling a bill to require that the interlock device be installed immediately the next time a driver with a DWI is caught registering a car.

Rice's office recently conducted a sting, finding 20 of 147 people monitored were driving without their mandated ignition interlock device.

"Overall, Leandra's Law is working, but there are instances where there are defendants who think they can game the system," Rice said.

Violating the interlock law is a misdemeanor, punishable by up to a year in jail.

State Division of Criminal Justice Deputy Commissioner Robert Maccarone insists the law is working well for its first year. He said the roads should be safer because many drunken drivers either have the interlock device - or are no longer driving.

He also noted the city may be behind the low state installation rate because there are so many mass transit options if someone decides not to drive.

Leandra's Law was named after 11-year-old Leandra Rosado, who was killed in a one-car crash on the West Side Highway in 2009. The driver, Carmen Huertas of the Bronx, pleaded guilty to being under the influence of alcohol and is serving four to 12 years behind bars.

The law has two major components: the interlock device for all DWI drivers and a provision making it a felony to drive drunk with children under the age of 16 in the car.

THANK YOU FOR ALL OF YOUR HARD
WORK AND DEDICATION TO IMPROVING
TRAFFIC SAFETY IN YOUR COMMUNITY!

If you wish to comment on this edition of the newsletter, if you have ideas for future newsletters, or if you wish to discuss any traffic safety issues with the Training Center, please contact Rob Daniel at rd48@txstate.edu.

Copyright © 2011, Texas Justice Court Training Center