Abstract
Efforts at reducing the consequences of drinking and driving have met with some success over the last two decades. However, alcohol-impaired driving continues to be a major public health problem. The National Highway Traffic Safety Administration (NHTSA) set an annual goal of no more than 11,000 alcohol-related traffic fatalities by the year 2005. Over the past 7 years, the proportion of traffic fatalities involving alcohol has minimally declined (Table 1). In 2000, 40% (N = 16,653) of all traffic fatalities were alcohol related (1). It is clear that NHTSA will not meet its goal without additional countermeasures. Ignition interlocks are a technological countermeasure to alcohol-impaired driving and ignition interlock license restriction programs appear promising as a deterrent to alcohol-impaired driving. However, not all states have laws or administrative regulations allowing interlock use, and widespread utilization of interlocks has not materialized. The current research investigates potential legal barriers to effective ignition interlock implementation in the United States.

Table 1: Proportion of Traffic Fatalities Involving Alcohol

<table>
<thead>
<tr>
<th>Year</th>
<th>Proportion (%)</th>
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<tbody>
<tr>
<td>1994</td>
<td>41</td>
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<tr>
<td>1995</td>
<td>41</td>
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<tr>
<td>1996</td>
<td>41</td>
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<td>1997</td>
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<td>1998</td>
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<td>38</td>
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<tr>
<td>2000</td>
<td>40</td>
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</tbody>
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Introduction
Ignition interlock devices are designed to prevent an alcohol-impaired driver from starting and operating a motor vehicle equipped with the device. The interlock requires a driver to submit a breath sample, which is tested for alcohol concentration before the driver starts a motor vehicle. If the driver provides a breath sample with an alcohol concentration at or above a preset limit, the ignition will not start and will prevent an alcohol-impaired person from driving the vehicle on which the ignition interlock is installed. The device requires that periodic breath tests be submitted after the vehicle is started to prevent a driver from starting the vehicle and then drinking. The interlock also maintains a record of successful and failed breath tests. Interlocks bypass the motivational aspects of deterrence-based and educational approaches and remove the offender’s ability to choose to drive while impaired by alcohol.

The license restriction portion of the interlock license restriction program means that drivers are approved for license reinstatement on the condition that they agree to a license restriction prohibiting them from operating a vehicle without an ignition interlock device. The conditional interlock license restriction is prominently displayed on the driver's license of each participant in the program whether or not participants own a vehicle titled in their name.

In the most scientifically valid evaluation of an ignition interlock license restriction program, a completely randomized trial of ignition interlock license restrictions in Maryland concluded that the ignition interlock license restriction program reduced the risk of an alcohol-related traffic arrest during the 1-year program by about 64 percent. During years 2, 3 and 4, when the ignition interlock license restrictions were removed, the alcohol-related traffic recidivism rates of the interlock and control groups converged and were not statistically significantly different (2-4). While ignition interlock license restriction programs appear promising as a deterrent to drinking and driving, not all states have laws or administrative regulations allowing their use.

The purpose of this study was to determine current interlock use in the United States; evaluate and assess applicable Federal constitutional, state statutory, case law and administrative rules and regulations to identify potential legal constraints preventing effective implementation of ignition interlock programs; and summarize similarities in current state law and administrative regulations.

Methods
We conducted a telephone survey of interlock use by state and a legal review to determine current interlock use and potential legal barriers to the implementation of ignition interlock license restriction programs in the United States. Primary sources for the Federal constitutional legal review included U.S. Reports, The U.S. Code Annotated (U.S.C.A.), the Code of Federal Regulations (C.F.R.), West’s Supreme Court Reporter, Federal Reporter and Federal Supplement and Federal Digest. Applicable state statutory, case and constitutional law and administrative rules and regulations were reviewed using annotated state codes, state case law and compendiums of state administrative rules and regulations and West’s Regional and State Reporters and Digests. These resources were supplemented with relevant American Law Reports (A.L.R.), law reviews and legal periodicals. Electronic resources used included Westlaw, Lexis and Nexis.
The legal review focused on constitutional (both judicial and administrative) issues that might be preventing effective interlock use. These issues included procedural due process, substantive due process, equal protection, privileges and immunities, excessive fines, double jeopardy and state civil liability concerns under the doctrine of sovereign immunity.

Based on the legal review, we summarized similarities in current state law and administrative regulations as a function of interlock use to determine what laws and/or administrative regulations appear most favorable to the use of interlocks. The research question of interest is, given what is known about the efficacy of interlocks and the effectiveness of ignition interlock license restriction programs, why are so few interlocks in use? Our focus is on potential legal constraints on the imposition of ignition interlock license restriction programs.

**Results**

Forty-nine states and the District of Columbia took part in the telephone survey. As of September 2001, approximately 65,000 interlocks were in use in the United States. This is almost double the 35,000 interlocks reported to be in use in 1998 (5). This 65,000 pales in comparison to the 1.47 million drinking and driving arrests reported in 2000 (6).

Forty-two states and the District of Columbia have statutes and/or administrative regulations providing for the use of interlock devices on vehicles operated by drivers who have been convicted of a first, second or subsequent alcohol-related traffic offense (Figure 1).

**Figure 1: States Authorizing Use of Ignition Interlocks as of September 2001**
Although courts have, on rare occasions, ruled ignition interlock programs (or pilot programs) unconstitutional at the trial level, all such decisions were reversed on appeal. Given that ignition interlocks bear a rational relationship to highway safety, a legitimate state interest, and that no suspect class is involved (i.e., race, religion or country of origin), the imposition of ignition interlocks has almost invariably been held to be constitutional provided that appropriate procedural safeguards are in place. The legal review concluded that the use of ignition interlocks under appropriate conditions typically does not violate the Fifth, Eighth or Fourteenth Amendment to the United States Constitution.

Double jeopardy and excessive fines do not raise insurmountable constitutional concerns. Double jeopardy addresses the question of whether the imposition of an interlock device in an administrative setting precludes a court from pursuing a criminal action. Based on a series of court cases in Maryland and elsewhere, the answer is clearly “no.” State courts of appeals have ruled that a state can pursue an administrative remedy at the same time it is pursuing a conviction for a criminal offense. The excessive fines clause of the Eighth Amendment to the Constitution does not prohibit the implementation of interlocks. Although the cost of an interlock is not insignificant, this cost does not necessarily rise to the level of an excessive fine or significant deprivation provided that an indigent fund is available for offenders needing monetary assistance. Establishment of an indigent fund would address constitutional issues surrounding the poor, who are not considered to be a “suspect class.”

Procedural due process (which included “privileges and immunities” for purposes of this review) addresses the issue of the type of trial or hearing process to which a defendant is entitled. The right to due process applies if a significant life, liberty or property interest is at stake. Courts have consistently held that there is a property interest in a driver’s license, but less so if the license has already been suspended or revoked. Provision for judicial and/or administrative hearings prior to the imposition of ignition interlocks would certainly appear to satisfy constitutional procedural due process concerns. Substantive due process addresses the issue of whether the imposition of an interlock device violates (by state action, statute or rule) a fundamental constitutional guarantee. Absent a suspect class (i.e., race, religion or country of origin), courts generally interpret substantive due process in light of a “rational basis test.” That is, if the statute, administrative rule or state action pursues a valid government purpose and is applied appropriately, it is constitutional. Since states have a legitimate interest in highway safety, substantive due process is not a barrier to the implementation of ignition interlock license restriction programs.

Current ignition interlock statutes and administrative regulations were grouped into four mutually exclusive categories based on the legal review. The four categories, as well as the number of states in each category and the category’s proportion of interlock market share are as follows: (I) No Interlock Statutes or Administrative Regulations (8 states; 0.3%); (II) Administrative Regulations Authorizing Interlocks in an Administrative Setting Only (6 states; 10.8%); (III) Statutes Authorizing Interlocks in a Judicial Setting Only (23 states; 53.3%); and (IV) Statutes or Administrative Regulations Authorizing Interlocks in Both a Judicial Setting and an Administrative Setting (14 states; 35.6%).
Category I: No Interlock Statutes or Administrative Regulations*

Alabama  Hawaii  Massachusetts  Vermont
Connecticut  Maine  South Dakota  Wyoming

* Courts or administrative agencies may, on occasion, order the imposition of ignition interlocks in the absence of specific statutory or administrative authority.

Category II: Administrative Regulations Authorizing Interlocks in an Administrative Setting Only

Colorado  Kansas  Minnesota
District of Columbia  Michigan  West Virginia

Category III: Statutes Authorizing Interlocks in a Judicial Setting Only

Alaska  Mississippi  New Jersey  Tennessee
Arizona  Missouri  North Carolina  Texas
Idaho  Montana  Ohio  Utah
Indiana  Nebraska  Pennsylvania  Washington
Kentucky  Nevada  Rhode Island  Wisconsin
Louisiana  New Hampshire  South Carolina

Category IV: Statutes or Administrative Regulations Authorizing Interlocks in Both a Judicial Setting and an Administrative Setting

Arkansas  Georgia  New Mexico  Oklahoma
California  Illininois  New York  Oregon
Delaware  Iowa  North Dakota  Virginia
Florida  Maryland

Discussion
Interlock use has doubled in the last 3 years, but it is still minuscule compared to the drinking and driving problem. There appear to be no significant legal barriers to implementation of ignition interlock license restriction programs provided that an indigent fund is available. Based on constitutional considerations, we find that laws and administrative regulations setting forth conditions for the imposition of interlocks tend to be adjudicated more favorably in administrative settings, even though 53.3% of ignition interlocks in use in the United States as of September 2001 were authorized in a judicial setting. Statutes authorizing interlocks in a judicial setting can be discretionary, mandatory or both. Based on our review and a forced classification of statutes and administrative regulations into mutually exclusive categories, legislative sentiment appears to favor judicial imposition of interlocks over administrative programs. Given that courts in “the real world” tend to emphasize “individual sentencing” (which circumvents
widespread interlock use because “mandatory” does not equal “mandatory” in a judicial setting), administrative ignition interlock license restriction programs appear more promising from a legal and practical perspective and should be expanded.

This study did not find any significant legal barriers to the widespread use of interlocks. In fact, the climate in many states supports implementation of ignition interlock license restriction programs, especially at the administrative level. Although the use of interlocks in the United States has almost doubled since 1998, their use is still limited. Further research is needed to determine why widespread use of interlocks has not materialized.

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References