

Ignition Interlock Laws

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Resources

- ▶ Texas Constitution and Statutes Website: <https://statutes.capitol.texas.gov/>
- ▶ TJCTC Deskbooks: <http://www.tjctc.org/tjctc-resources/Deskbooks.html>
 - ▶ Administrative Proceedings Deskbook (Chapter 9: Occupational Driver's Licenses)
 - ▶ Magistration Deskbook (Chapter 2: Magistrate Duties Following an Arrest)
- ▶ Certified Texas IID Service Centers: <http://gato-docs.its.txstate.edu/jcr:1381e61e-4c31-4a1d-80e8-4cfdbd857861/iidServiceCenters.pdf>

Abbreviations

- ▶ IID = Ignition Interlock Device
- ▶ CCP = Code of Criminal Procedure
- ▶ PC = Penal Code
- ▶ TC = Transportation Code

Bond Condition

CCP Chapter 17

Upon Conviction of Certain Offenses

PC 49.09(h)

Community Supervision Condition (CCP 42A)

CCP 42A.407 & 42A.408

Occupational Driver's License Restriction

TC Chapter 521, Subchapter L

Bond Condition

CCP Chapter 17

Mandatory

IF defendant is charged with any of the following Penal Code offenses, the magistrate SHALL order defendant to install an IID & not operate any motor vehicle without one:

An offense of:

Intoxication Assault (PC 49.07)

Intoxication Manslaughter (PC 49.08)

A SUBSEQUENT offense of:

DWI (PC 49.04)

DWI w/ Child Passenger (PC 49.045)

Flying WI (PC 49.05)

Boating WI (PC 49.06)

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

Permissive

“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”

-- CCP 17.40

Installation

At the
defendant's
expense

Before the 30th
day after the
date the
defendant is
released on
bond.

-- Art. 17.441(c), CCP

Monitoring

-- Art. 17.441(d), CCP

In order to be effective,
IID installation and reports should be
monitored



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

Magistrate shall set
fee, not to exceed
\$10 as determined
by the county
auditor
/commissioners
court

Monitoring Agencies

(Note: Interlock providers like SmartStart, Guardian, and LifeSafer are not monitoring agencies, but provide reports to the monitoring agencies)

Probation department (C.S.C.D.)

- GC 76.015 says \$25-60/month can be charged to someone who receives services.
- This statute might allow CSCD to directly charge the defendant \$25-60/month, but a fee ordered by a magistrate should not exceed \$10 (see previous slide).

County Attorney's Office

District Attorney's Office

County Sheriff's Office

Court w/ jurisdiction over defendant

Responsibility for monitoring or modifying bond conditions

When formal charges are filed in a trial court, responsibility for monitoring and modifying bond conditions shifts from the magistrate who originally set the conditions to the judge of the trial court.

EXAMPLE:

A magistrate requires the defendant to install an IID within 30 days. Formal charges are filed in the trial court 20 days later. It is the trial court's responsibility to monitor/enforce this bond condition.

EXAMPLE:

A magistrate does not require the defendant to install an IID as a condition of bond following an arrest for a first time DWI. After formal charges are filed, the trial court judge may add this bond condition.

Violation of Bond Condition

What happens if you learn that the IID condition has been violated?

- ▶ Bond revocation hearing may be held
 - ▶ by magistrate if formal charging instrument not yet filed
 - ▶ by trial court judge if formal charging instrument has been filed

-- Art. 17.09, Sec. 3, CCP; 17.40

Upon Conviction of Certain Offenses

PC 49.09(h)

When & How Long?

Defendant convicted of a second or subsequent offense within 5 years relating to operation of a motor vehicle while intoxicated?



Must install IID by end date of license suspension under TC 521.344 and keep installed for one year

Installation

- ▶ At the defendant's own cost
 - ▶ If the court determines the offender is unable to pay for the device, the court may impose a reasonable payment schedule not to extend beyond the first anniversary of the date of installation
- ▶ Defendant must provide evidence of installation on or before date license suspension ends

Monitoring

CSCD may operate programs to provide supervision/verification of compliance

May charge \$25-60 per month to someone who "receives services"

-- Government Code 76.011, 76.015

Enforcement

- ▶ Failure to comply = punishable by contempt.
- ▶ For purposes of enforcement, court that enters an order under 49.09(h) retains jurisdiction over the defendant until the date on which the device is no longer required



Community Supervision Condition (CCP 42A)

CCP 42A.407 & 42A.408

Conflict with PC 49.09(h)

If there is a conflict
between the provisions
we just discussed from
PC 49.09(h) and the
provisions we're about to
discuss from CCP 42A

PC 49.09(h) controls

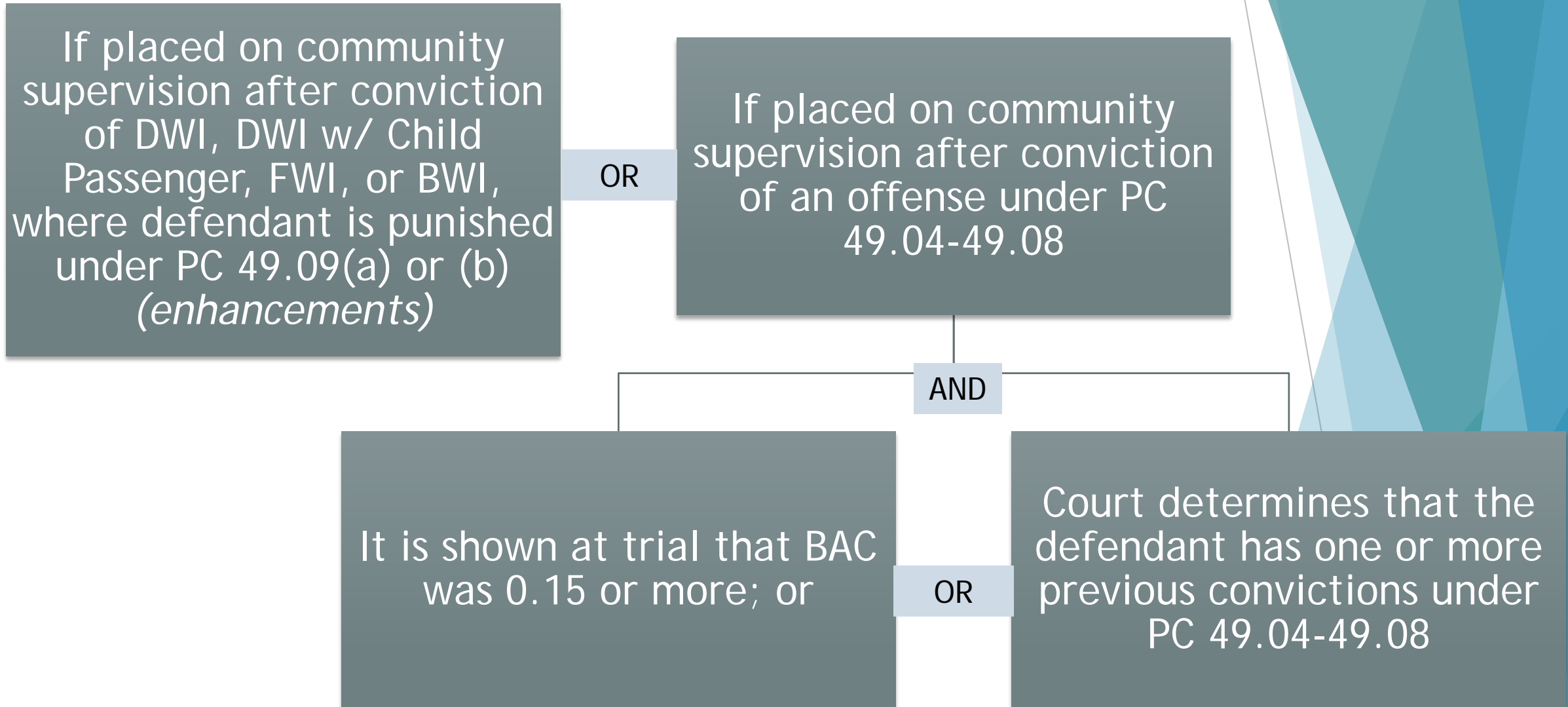
Optional

If placed on community supervision after conviction of an offense under PC 49.04-49.08

-- CCP 42A.408(b)

Mandatory

-- CCP 42A.408(c)



▶ A previous conviction may not be used to require IID as described on previous slide if:

- ▶ Was a final conviction under PC 49.04, 49.045, 49.05, 49.06, 49.07, or 49.08, for an offense committed more than 10 years before; AND
- ▶ There have been no other convictions under PC 49.04, 49.045, 49.05, 49.06, 49.07, or 49.08, in the past 10 years.

-- CCP 42A.408(d)

When
Mandatory
Condition
Doesn't Apply

If Defendant is
under 21

-- CCP 42A.408(e)

Notwithstanding any other law--

ALWAYS mandatory if:

- ▶ defendant placed on community supervision is under 21 at the time of the offense, and
- ▶ was convicted of an offense under PC 49.04-49.08

Installation & Duration

- ▶ At defendant's own cost
 - ▶ If court determines defendant is unable to pay, may impose a reasonable payment schedule not to exceed twice the length of the period of the court's order.
- ▶ Defendant must provide evidence of installation w/i 30 days of conviction unless court finds it would not be in the best interest of justice & enters findings on the record.
- ▶ The device must remain installed for not less than 50 % of the supervision period.

-- CCP 42A.408(f)

EMPLOYMENT EXEMPTION

*Notwithstanding
any other provision
of Subchapter I of
Ch. 42A*

-- CCP 42A.408(h)

Defendant may
operate a vehicle
without the IID if

NOTE: This exemption
does not apply if the
business entity that
owns the vehicle is
owned or controlled by
the defendant

Defendant is
required to operate
a vehicle in course
and scope of their
employment,

The vehicle is owned
by the employer, AND

The employer has been
notified of the driving
privilege restriction and
proof of notification is
kept with the vehicle

If License is Suspended

- ▶ Notwithstanding any other provision of Subchapter I of Ch. 42A, a defendant who is placed on community supervision and whose license is suspended for a conviction under PC 49.04-49.08, may operate a motor vehicle during the suspension if the defendant:
 - ▶ obtains and uses an IID as provided by Article 42A.408 for the entire period of the suspension; and
 - ▶ applies for and receives an occupational driver's license with IID under TC 521.2465

-- CCP 42A.407(g)

Occupational Driver's License Restriction

TC Chapter 521, Subchapter L

Automatic Suspension After Conviction

-- TC 521.246

If license was suspended as a result of a conviction under PC 49.04-49.08, court shall impose IID restriction for the duration of the period of suspension

Remember: If license was suspended automatically after a conviction, petition must be filed in the convicting court (unless issued through a drug court program under GC 123.009)



At person's own expense unless court finds that it's not in the best interest of justice & enters finding in the record. If the court determines that the person is unable to pay, may impose a reasonable payment schedule for a term not to exceed twice the period of the court's order.

Company Car Exception

A person convicted of a DWI offense who is required to have an IID may operate a vehicle without the IID if:

- ▶ He is required to operate a vehicle for work
- ▶ The vehicle is owned by the employer
- ▶ The employer is not owned or controlled by the restricted person
- ▶ The employer is notified of the restriction, and
- ▶ Proof of the notification is with the vehicle



-- TC 521.246

Must also include IID restriction in ODL order if another court order already exists requiring IID

Bond Condition

Example: IID Bond condition imposed after DWI arrest and defendant is seeking an ODL pending trial.

Order under PC 49.09(h)

Example: IID required after DWI conviction suspension has ended and then license is suspended again for failure to pay surcharges.

Condition of Community Supervision
or
Installed IID Under 42A.407(g)

Note: License won't necessarily be suspended as a result of the conviction when on community supervision.

Could be suspended afterwards for another reason, like failure to pay surcharges. (If so, wouldn't have to go through convicting court or drug court program for ODL).

Can you impose
an IID
restriction if
there is no
applicable
conviction or
court order?

No. A court can not choose to order an IID as a condition of an ODL over the applicant's objection when not authorized by a specific law

Deleon v. State, 284 S.W.3d 894
(Tex. App.—Dallas 2009, no pet.)

But what if the applicant says they will voluntarily install an IID and asks the court to order it in the ODL?

This was not addressed by Deleon-
In that case, it wasn't voluntary

We do not think the statute provides authority to do this

What if an IID should have been required as a bond condition but was not?

- ▶ Can't just put it on the ODL
- ▶ The magistrate who ordered the bond conditions or the trial court with jurisdiction would have to modify the conditions to add the requirement

Effects of IID Restriction on Other Orders

Don't have to
show essential
need

- If convicted of an offense under PC 49.04 - 49.08,
- Show evidence of financial responsibility; and
- Submit proof that IID is installed


May not be subject to
any time of travel,
reason for travel, or
location of travel
restrictions.

No effective date
delays even if
there otherwise
would be

- If submit proof that IID is installed

Monitoring - Court of Record

- ▶ If the person has submitted proof of IID installation, only a court of record may order the person to:
 - ▶ Submit to supervision by the local Community Supervision and Correction Department to verify compliance; and
 - ▶ Pay the monthly administrative fee (\$25 - \$60) authorized by Govt. Code § 76.015
- ▶ May order supervision to continue until the end of the suspension period
- ▶ May modify or terminate the supervision for good cause




--TC 521.2462

Monitoring - Not Court of Record

--TC 521.251(d-1)

May not order community supervision when person has submitted proof of IID installation



But may require person to report to the court that issued the ODL to confirm compliance

Revocation of Order

- ▶ The court that signs an order granting an occupational license may issue an order revoking the license at any time for good cause (must send certified copy to DPS)
- ▶ If a person fails to maintain their IID, the court shall revoke the ODL
- ▶ Class B misdemeanor if operate a motor vehicle in violation of a restriction
 - ▶ On conviction, ODL and order granting ODL are revoked (but still have to tell DPS to revoke it)

-- TC 521.251(d-1), 521.252, 521.253



Questions?