

State of Vermont
DEPARTMENT OF MOTOR VEHICLES
120 State Street
Montpelier, VT 05603-0001
www.dmv.state.vt.us

[phone] 802.828.2011
[fax] 802.828.2170
[ttd] 800-253-0191

DEPARTMENTAL MEMORANDUM**DATE:** October 1, 2010

To: Joint Legislative Corrections Oversight Committee
Joint Transportation Oversight Committee

From: Robert Ide, Commissioner

Subject: Act No. 126 ~ An Act Relating to the Study and Recommendation of Ignition Interlock Device Legislation

As requested in Act No. 126, attached is the *Report on Additional Guidelines for Participation in the Pilot Project and the Terms of Operation Under an Ignition Interlock RDL*.

If you have any questions or need further information, feel free to contact me.

Robert Ide, Commissioner



State of Vermont
DEPARTMENT OF MOTOR VEHICLES
120 State Street
Montpelier, VT 05603-0001
www.dmv.state.vt.us

[phone] 802.828.2000
[fax] 802.828.2098
[ttd] 800-253-0191

Agency of Transportation

Act No. 126 ~ An Act Relating to the Study and Recommendation of Ignition Interlock Device Legislation

Additional Guidelines for Participation
in the Pilot Project and the Terms of
Operation Under an Ignition
Interlock RDL

The following report is more of a progress report than a report on Additional Guidelines for Participation in the Pilot Project and the Terms of Operation under an Ignition Interlock RDL; however, we do have some recommendations for future legislation. When reviewing this report, please keep in mind, all subjects are still a work in progress.

Upon passage of S.103, the first order of business was to review the bill and assemble a team of the appropriate DMV staff who would work on the implementation of Act 126.

At our first meeting we quickly determined we would not issue a new license type; instead, we would issue a "corrected" license with an "RDL" restriction. However, after that relatively quick resolution, nothing else was as simple.

In late June we met with the **Department of Corrections** who gave us the description of their **Intensive Substance Abuse Program**; the participants in the pilot project will be individuals who are enrolled in, and under the supervision of ISAP. The DOC advised us they could provide us with as many, or as few, participants as we feel can be handled with the limited resources we have available. The DOC provided us with a sample of some of the current participants in ISAP. We then reviewed the driving records of those on the list to get a better sense of the subject "pool" and found a large number of those on the list had multiple open suspensions and some had no license record. The DOC will provide us with another list in late November or early December, at which time we will review records and choose the participants for the pilot project.

In August, the CEO of an ignition interlock device manufacturer provided the team with a demo of one of their devices. The President of a local auto detailing business also participated in the demo. The manufacturer currently does business in other states; while the auto detailer currently provides device services to an Arizona resident who is required to operate only vehicles with an ignition interlock, and who is also in Vermont for a period time. It was a very informative meeting which answered the many questions we had about devices.

On September 2nd and September 3rd, operating under a grant from the **National Highway Traffic Safety Administration (NHTSA)**, the **Traffic Injury Research Foundation (TIRF)** conducted a 2-day workshop on ignition interlock device program implementation. Attending the workshop were the members of the DMV Act 126 team, as well as Commissioner Robert Ide, Representative Maxine Grad and representatives from the Department of Public Safety and the Legislative Council. Two representatives from NHTSA were also present at the workshop.

On the first day of the workshop, during which many pages of notes were transcribed, TIRF provided the attendees with a slide show on (1) Ignition Interlock Device Technology, (2) Research, (3) Implementation, (4) Legal Concerns, and (5) Indigent Funding. Throughout the slideshows, many questions were answered.

TIRF also provided us with a number of documents from other states which included (1) Administrative Rules, (2) Forms, (3) Workflows, and (4) Timelines.

➔ As a note of interest, it took the State of New York 340 work days to implement their interlock program.

On the second day of the workshop we had a roundtable discussion of what our workflow would be. While discussing our workflow, TIRF made notations and later formatted the information into a workflow document. (A copy of the workflow document can be found further on in this report.) Also during the discussion, tasks were assigned to members of our team. The tasks are compromised of work/research that needs to be completed to aid in the implementation of our pilot project and our interlock program. (A copy of this document can also be found further on in this report.)

While TIRF's advice, assistance and continued availability are invaluable, it became clear our Department has much work and much planning ahead of us. In some respect, it was overwhelming.

One thing is clear; the pilot project will certainly be a learning experience for us, and it will allow us some much needed time in preparing for July 1, 2011 when the program is opened to all eligible offenders. Our Department will certainly not have everything in place before the pilot begins on January 1, 2011; nor is it even feasible for us to do so. Act 126 provides for ignition interlock rulemaking; while much effort has already been put into this task, there is still much to do. The Rule being drafted is quite extensive and requires a significant amount of research. The administrative rules from several other states are being reviewed as suggested by TIRF. Our rule will also have the technical specifications for the interlock devices that manufacturers wish to certify for use in Vermont. In addition to the amount of time spent researching and drafting the rule, the APA process itself is a very lengthy process, typically taking 6 – 8 months to complete.

At this point, our Department is focusing on the two crucial documents necessary for the implementation of both the pilot project, and a more established interlock program; those being (1) the Administrative Rule and (2) the **Request For Certification**. (The contents of those documents are itemized below.) The Administrative Rule is by far the most critical document, while the RFC is the document we will distribute to alcohol ignition interlock device manufacturers to solicit, certify and license manufacturers and service providers who wish to provide their services in Vermont. Both NHTSA and TIRF provided us with a list of manufacturers who do business in other states.

❖ **Please Note:** As of the writing of this report, both the Administrative Rule and the Request for Certification are still being drafted; they have not yet been finalized.

- The Administrative Rule contains the following sections:
 1. Definitions
 2. Certification of Manufacturers of Ignition Interlock Devices
 3. Standards and Specifications for Ignition Interlock Devices
 4. Manufacturer Responsibilities
 5. Installation, Monitoring, Servicing and Removal of Ignition Interlock Devices

6. Reports and Records
7. Audit and Inspection of Records and Facilities
8. Application for Ignition Interlock Restricted License
9. Right to Hearing

- The Request For Certification:
 1. Outlines the requirements for interlock device manufacturers to do business in Vermont.
 2. Specifies what will be expected of the interlock installers and service providers the manufacturers wish to recruit for the installation and maintenance of the interlock devices
 3. Contains the required technical specifications of the interlock devices the manufacturers wish to certify for use in Vermont.

We are now working on refining a search of our driver records to get an estimate on how many drivers would be eligible for an RDL when the interlock program opens to all eligible offenders. The results of this search will be included in the RFC, providing manufacturers with an estimated number of potential customers.

What is unfortunate, is most of our Department's resources are devoted to the Vermont Driver License and Registration Enterprise System project. VTDrives is a major replacement of the Department's thirty-five year old mainframe computer system. As a result, there are only four individuals available to focus only a portion of their time to this Act. At this time, we question who will be administering the program once it has been implemented; this applies to both the pilot project and the program opening on July 1, 2011. The pilot project will be more manageable because it will be small in comparison to when the program is opened to all eligible offenders. It is very likely once the program is opened up to all eligible offenders, a new position will need to be created; somewhat of an *Ignition Interlock Program Coordinator*. It will be difficult to add these tasks to the existing staff in whatever division it may be placed (in Operations, Enforcement or in both). Below is a sampling of some of the new tasks that will need to be performed before and throughout the pilot project, and when the program opens to all offenders:

- Review Applications for Ignition Interlock Device **R**estricted **D**river **L**icenses (RDL).
- Determine eligibility for an RDL.
- Receive, review and take any necessary action on the reports the service providers download from the interlock devices every 30 days.
- Act as a contact for both the interlock manufacturers and the interlock installers/service providers.
- Review manufacturer applications for the certification of interlock devices.
- Certify manufacturers to do business in Vermont.
- Certify/license interlock installers/service providers.

- Audit manufacturers.
- Audit installers/service providers.
- Troubleshoot any issues regarding manufacturers and installers/service providers.
- Manage the ongoing operations of the pilot project and then the interlock program itself.

Also in reference to VTDrives, a High Level Design document and Business Rules have been drafted. When VTDrives is implemented, there will be some RDL provisions in the new system. However, because not all of the details of the pilot project have been worked out, the High Level Design and Business Rules are not all inclusive.

In addition to focusing on the Administrative Rule and the RFC, the team is going over the notations from the TIRF workshop. These notations resulted in additional questions which the team has been discussing and resolving at the weekly team meetings; the notations have been broken down by subject and are being addressed one at a time.

During the TIRF workshop, the moderator did express we will not need to “reinvent the wheel”; many other jurisdictions have already undertaken this initiative and we can learn from their experiences. To that end, TIRF provided us with copies of some of the forms, administrative rules and workflows of other states. These documents are assisting us in the drafting of our own Administrative Rule and our RFC. New York has a very well established program in place and their documents provide excellent models for some of the documents we will require.

We have begun and will continue our outreach to the law enforcement community, educating them about the pilot project, sharing what we have learned and preparing them for the interlock program which begins on July 1, 2011. Our intent is to keep them up-to-date on our progress.

Prior to the implementation of an interlock program on July 1, 2011, much training will need to be performed; this training will not only include in-house staff, but also law enforcement and the judicial and penal systems. TIRF has indicated they would be able to visit us again to perform this training.

Additional Legislation

While working on the implementation of the pilot project, the team has been compiling a list of items we may need for future legislation, to date, some of those items are:

- A fee for the initial issuance of an Ignition Interlock Restricted Driver’s License (RDL). Currently the only fee DMV has the statutory authority to charge is the Duplicate/Corrected Driver’s License fee of \$15.00. Some examples of what other states charge is:
 - California: \$15
 - Florida: \$12
 - Maryland: \$30
 - New Mexico: \$53
 - Virginia: \$50/month
 - Washington: \$100
 - W. Virginia: \$100
 - Wyoming: \$50
- Charge an RDL Renewal Fee.

- Charge an RDL Application Fee. This is different than the fee for an RDL. Some states charge a fee to simply apply for an RDL.
- Charge an Ignition Interlock Manufacturer Certification fee. Some examples of what other states charge is:
 - Alaska:
 - ♦ \$1,000 – Initial application
 - ♦ \$500 – Yearly renewal fee
 - Georgia: \$250
- Charge an Ignition Interlock Installer Licensing fee. This is a fee DMV would charge to license all installers of ignition interlock devices.
- Specify what vehicles an ignition interlock may be installed. For example, it would not be advisable to install an interlock device on a motorcycle. Ignition interlock devices perform “rolling retests”, where the driver must provide a breath sample while driving; this could be dangerous to do while operating a motorcycle.
- Allow for extensions of the period of time for which a driver must operate under the terms of an RDL. For example, require the driver to go through a period of no failures before the removal of the ignition interlock device. Some states require a driver go three (3) months without a failure.
- Require the use of a higher class of interlock device based on the driver’s violation (i.e. DW4) or due to violations while using the interlock device. There are three (3) classes of interlock devices:
 - ♦ Class I – The standard unit – breath test only.
 - ♦ Class II – The device has a camera which takes the driver’s picture as they provide the breath sample.
 - ♦ Class III – Has all the features of Classes I and II and has GPS capabilities. The device can also contact law enforcement when the driver blows over the limit.
- Statute for penalizing a person for providing a breath test for a driver.
- Statute which makes the RDL holder accountable for **all** breath tests collected in the device. For example, if a family member provides a breath test to start the vehicle for their own use, and the family member blows over the limit, the RDL holder would be accountable for that breath sample. The only alternative to this would be having a Class II interlock device which takes a photo at the time a breath sample is taken. This would provide proof of who submitted the breath sample.
- Allow for a medical waiver to minimize the amount of breath needed for a breath sample. For example, interlock devices have the ability to adjust the amount of breath needed for a sample; if an RDL holder has a medical condition which makes it difficult to provide a breath sample, the device can be adjusted to lower the volume of breath needed for the sample, however, the RDL holder would have to submit a medical waiver.

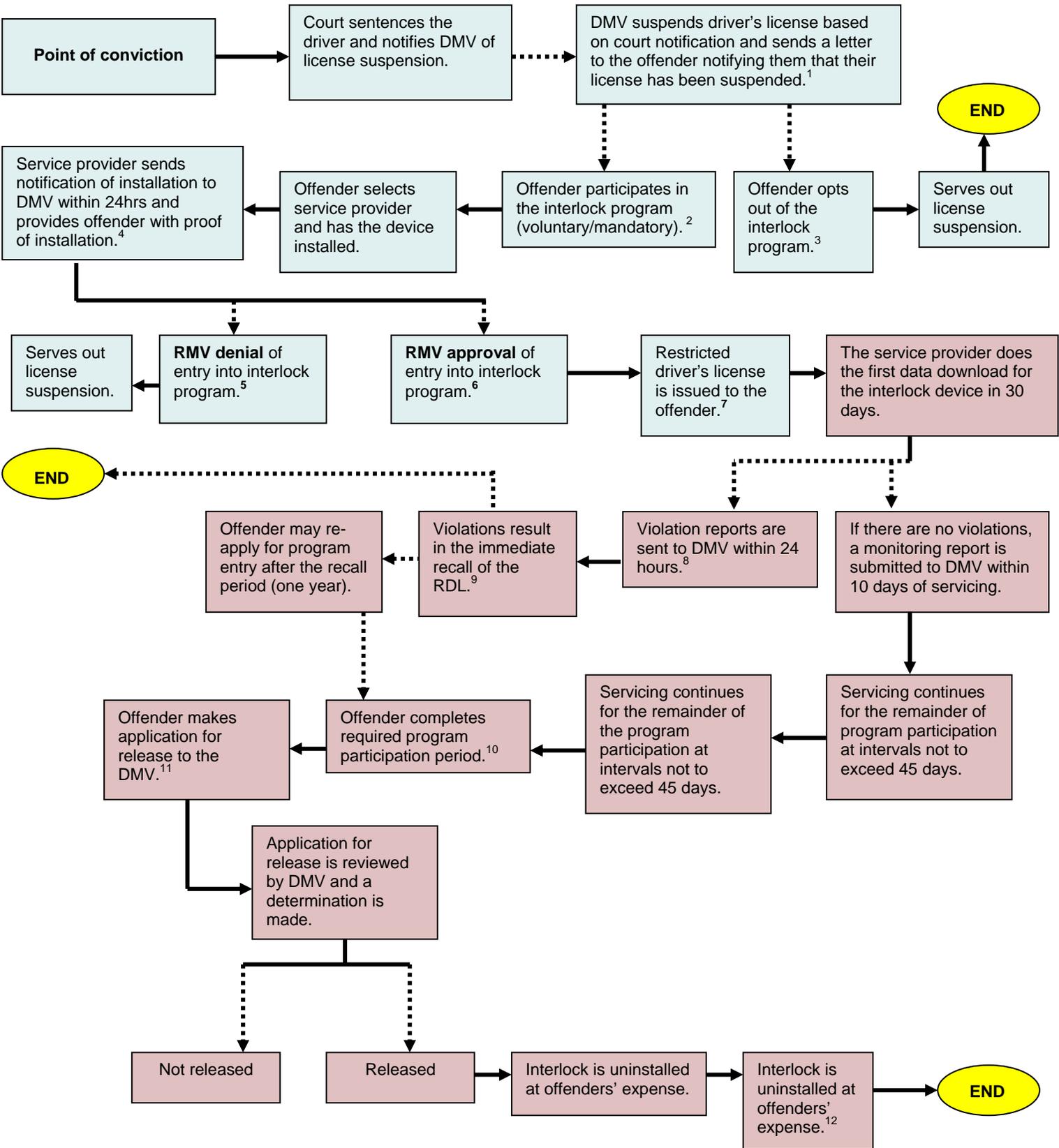
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- Allow for a one-time emergency override of the device, and specify the criteria for an emergency override. This would allow, in the event of an emergency, the vehicle to start without providing a breath sample.
- Require lifetime interlock devices on repeat offenders, high BAC's and "hard core" offenders.

In closing, while our Department is making progress towards the implementation of the pilot project, there are still many issues to be addressed, questions to be answered and documents to be completed. The next three months will be a very busy time for our department.

For copies (electronic or paper) of the TIRF workshop slides, or of any of the documents mentioned in this report, you may contact Joanne Bilodeau at 828-3093 or Joanne.Bilodeau@state.vt.us

VERMONT WORKFLOW



Vermont Workflow

1. Additional information regarding interlock program eligibility and a list of vendors is sent to the offender at this time.

It is also an option to provide offenders with information about the interlock program at the time that they are arrested by the officer.

2. If the offender opts out of the program the original suspension is:
 - > First offense: 90 days
 - > Second offense: 18 months
 - > Third or subsequent offense: 1 year
3. If the offender opts into the program the reduced sentences are:
 - > First offense: 30 days
 - > Second offense: 90 days
 - > Third or subsequent offense: 1 year
4. The interlock device is installed on the vehicle at the expense of the offender. At the time of installation, the service provider will outline the terms and conditions associated with the lease of the device, the client fee schedule, and other agreed upon forms. The offender will also be provided with background information about how the interlock device works and receive training on how to use the device properly by watching: a video, being instructed on how to blow properly, and being taken for a test drive. They will also be educated about what constitutes a violation as per Vermont's administrative rules.
 - > Upon proof of installation, the court may order the fine of an indigent person conditionally reduced by one half to defray interlock costs.
5. Those offenders deemed ineligible will:
 - > Either fail to meet the criteria outlined above;
 - > Were convicted of refusal to submit to evidentiary testing; and/or,
 - > Driving while impaired causing serious bodily injury or death.

If the offender is deemed ineligible, a deficiency letter will be processed explaining to the offender why they are ineligible and all other documents will be returned.

6. The offender must bring the following to the DMV in order to meet eligibility criteria and to be eligible receive a restricted drivers license (RDL):
 - > Proof of interlock installation;
 - > Proof of enrolment in an alcohol driving education program (CRASH);
 - > Proof of financial responsibility (SR-22); and,
 - > Pay application fee.
7. The interlock restriction is clearly noted on the back of this license.

If an offender is in the interlock program for more than a year they will be required to renew the RDL.

An application for renewal is sent by mail 30 days prior to expiry.

> The application form must be submitted with the unexpired Vermont RDL, proof of device installation, proof of financial responsibility, and proof of enrollment in an alcohol driving education program as well as the duplicate license fee (\$15 USD).

8. Violation reports include any evidence of:
 - > Circumvention, removal, or tampering;
 - > Registering a BAC of .02 or higher during a rolling retest;
 - > Failing to submit to a rolling retest that results in a permanent lockout conditions; and,
 - > Missing a service visit.
9. The license is suspended and the offender is required to remove the interlock device at their own expense. They then have the option to re-apply to the interlock program after a pre-determined period of up to one year.

Graduated sanctions for violations as opposed to immediate removal?

10. Offender completes required program participation period

- > First offense: 6 months
- > Second offense: 18 months
- > Third or subsequent offense: 3 years

11. Offender must fill out an application, pay the license reinstatement fee (\$71 USD), and receive an unrestricted license

Offender might require a clean period of up to 60 days with no violations before exiting the program?

12. The final data download is sent to DMV from the service provider at the time that the device is removed.