

2014 Changes in DUI Law

Mississippi Code §63-11-30:

All the following changes take effect on October 1, 2014.

Driving under the influence as provided by §63-11-30:

(1) It is unlawful for a person to drive or otherwise operate a vehicle within this state if the person:

- (a) Is under the influence of intoxicating liquor;
- (b) Is under the influence of any other substance that has impaired the person's ability to operate a motor vehicle;
- (c) Is under the influence of any drug or controlled substance, the possession of which is unlawful under the Mississippi Controlled Substances Law; or
- (d) Has an alcohol concentration in the person's blood, based upon grams of alcohol per 100ml of blood, or grams of alcohol per 200L of breath, as shown by a chemical analysis of the person's breath, blood or urine administered as authorized by this chapter; of:
 - (i) .08% or more for a person who is above the legal age to purchase alcoholic beverages;
 - (ii) .02% or more for a person who is below the legal age to purchase alcoholic beverages;
 - (iii) .04% or more for a person operating a commercial motor vehicle.

DUI: 1st Offense

Under the new law, after a person is convicted of DUI 1st, the court must order the person to attend and complete an alcohol safety education program (§63-11-32) within 1 year. DPS must suspend the driver's license for 90 days unless the person has surrendered his license. The person must then obtain an interlock restricted driver's license (§63-11-31). The person will be ineligible for a non-restricted license for 90 days.

DUI: 2nd Offense

2nd offense results in a 1 year license suspension. The person may also surrender their license to be voided and obtain an ignition interlock license and device. They must

either have had a suspended license for 1 year or driven exclusively under an ignition interlock restricted license for 1 year.

DUI: 3rd Offense

When charged with a 3rd offense DUI, a person may drive only under a restricted interlock ignition driver's license for 3 years following their release from incarceration. The person will be ineligible for an unrestricted license for 3 years.

*A person convicted of a 2nd or subsequent violation shall receive an in-depth diagnostic assessment, and if needed, complete treatment at an approved program. The person convicted is responsible for the fees associated.

Zero Tolerance for Minors

A person under 21 is eligible for nonadjudication of a qualifying first offense. Upon conviction, the court shall order the person to attend alcohol safety education program within 1 year. DPS shall suspend the driver's license for 90 days unless the license has already been surrendered and received an ignition interlock restricted driver's license.

A person convicted of a 2nd violation of this subsection shall have their license suspended for 1 year unless they have surrendered their license to be replaced with the interlock restricted license. The person must have the interlock restricted license until the person has either been subject to driving solely under an ignition interlock restricted license for 1 full year.

A person who is convicted of a 3rd or subsequent violation of this subsection shall have their license suspended for 2 years or until the person reaches 21 years of age, whichever is longer. A person may have this period of suspension reduced to 6 months if the person receives an in-depth diagnostic assessment and successfully completes treatment for alcohol or drug abuse (if deemed necessary).

DUI Test Refusal

If a person refuses the officer's request to submit a breath test, or is unconscious at the time of the test and refuses to consent to introduction of the results, shall have an additional administrative suspension of driving privileges unless the person surrenders his driver's license and obtains an ignition interlock restricted license. The person will be limited to driving only under the ignition interlock restricted license for twice the imposed suspension. Any other license restriction will run consecutively with the administrative suspension for test refusal imposed.

Aggravated DUI

The court may order an ignition interlock restriction as a condition of probation or post-release supervision not to exceed 4 years.

DUI Citations

It is the responsibility of the court clerk to send a copy of the traffic ticket, citation or affidavit, and any other pertinent documents concerning the conviction or other order of the court, to DPS.

Out of State Prior Convictions

This subsection applies to convictions in another state, territory or possession of the United States, or under the law of a federally recognized Native American tribe. If this occurred within 5 years before an offense shall be counted for the purposes of determining if a violation of subsection 1 of this section is a 2nd, third, or subsequent offense and the penalty that shall be imposed.

Ignition Interlock under this section

The court must order installation and use of an ignition interlock device as provided in §63-11-31 for every vehicle operated by a person convicted or nonadjudicated under this section.

Expunction

Any person convicted of first offense DUI and who was not the holder of a CDL may petition the court for an order to expunge the record of the conviction at least 5 years after successful completion of all terms and conditions of the sentence imposed for the conviction.

Nonadjudication

“Nonadjudication” means that the court withholds adjudication of guilt, either at the conclusion of a trial on the merits, or upon the entry of a plea of guilty by a defendant.

The court may rule that the qualifying first offense be nonadjudicated. A person is eligible for nonadjudication only 1 time. Qualifying offenses include one where a breath test was not refused unless the court provides written findings why nonadjudication is being allowed where a breath test was refused.

The court shall order the person to:

- (a) Pay all the nonadjudication fees imposed under §63-11-31 ;

(b) Pay all fines, penalties and assessments that would have been imposed for conviction;

(c) Attend and complete an alcohol safety education program

(d) Install an ignition interlock device on every vehicle driven by the person, obtain an ignition interlock restricted license, and maintain that license for 120 days; failure to obtain ignition restricted license will result in 90 day license suspension;

(e) Obtain from the interlock vendor proof that the person has not had violations of an ignition interlock device.

Other conditions to be imposed by the court may include:

(i) alcohol or drug screening, or both;

(ii) Proof the person has not committed any other traffic violations while under court supervision;

(iii) Proof of immobilization or impoundment of vehicles owned by the offender;

(iv) Attendance at a victim-impact panel.

The court may enter an order of nonadjudication only if the court finds, after hearing, that the offender has successfully completed all conditions imposed by law and the court. The clerk must forward a record of every nonadjudicated case to DPS, who will maintain a confidential registry of all cases that are nonadjudicated.

Mississippi Code §63-11-31

All of the following changes to §63-11-31 and its subsections take effect on October 1, 2014.

Ignition Interlock as provided by §63-11-31

“Ignition interlock” device means a device approved by DPS that connects to a vehicle's ignition system to a breath-alcohol analyzer and prevents a vehicle ignition from starting if the driver's BAC exceeds the calibrated setting on the device.

Interlock restricted license means a driver's license bearing a restriction that limits the person to operation of vehicle equipped with an ignition interlock device.

A person who can exercise driving with an interlock restricted license must have an ignition interlock device installed and operating on all vehicles driven by the person; OR if the person does not obtain an ignition restricted license within 15 days after conviction, DPS must suspend the persons driving privileges.

For a second or subsequent DUI violation, all vehicles owned by the person must be either impounded or immobilized.

A person who installs an ignition interlock device and obtains an interlock restricted license before conviction or nonadjudication will be given credit for the time period the ignition interlock device has been in use at the time of sentencing or nonadjudication.

A person convicted of DUI shall pay a fee of \$50.00 to be deposited into the Interlock device fund. A person nonadjudicated shall pay (in addition to other fines) a \$250.00 fee deposited into the Interlock device fund.

DPS shall approve which vendors shall be used to furnish the systems, assess fees to vendors, prescribe maximum costs to offender for installation, removal, monthly operation, periodic inspections, calibrations and repairs.

In addition to the penalties authorized for second or subsequent violations, the court must order that all vehicles owned by offender that are not equipped with an ignition interlock device be impounded or immobilized. No county, municipality, sheriff's department, or DPS are required to keep, store, maintain or otherwise exercise custody over the vehicle. Costs must be paid by person convicted no matter ability to pay.

Obtaining an Interlock Restricted License

- A person must be otherwise qualified to operate a vehicle;
- Must submit proof that an ignition interlock device is installed and operating on all vehicles driven by that person;
- Pay the fee set forth in §63-1-43.

If the person's privilege to drive has been suspended due to the person's DUI, the person must also pay reinstatement fees. If the person obtains an interlock restricted license before suspension of the driver's license, the fee will not be assessed.

Assessing Costs of Ignition Interlock

DPS promulgates rules and regulations for the use of monies in the Interlock Device Fund to offset the cost of device installation and operation by indigent offenders.

Indigence is determined based on proof of enrollment in 1+ types of public assistance:

- Temporary Assistance for Needy Families;

- Medicaid;
- Supplemental Nutritional Assistance (food stamps);
- Supplemental Security Income;
- Participation in a federal food distribution program;
- Federal housing assistance;
- Unemployment compensation;
- Other criteria approved by the department.

No more than 10% of the money in the Interlock Device Fund in any fiscal year shall be expended by the department for the purpose of administering the fund. Money in the Interlock Device Fund will be appropriated to the department to cover part of the costs of installing, removing, and leasing ignition interlock devices for indigent people who are required to install a device.

If money is available in the Interlock Device Fund, the department must pay to the vendor but department may not pay any amount above what the offender would be required to pay.

Reinstatement

A person must submit proof of successful completion of an alcohol safety program if so ordered by the court;

Pay the reinstatement fee required;

Pay the driver's license fee.

Commercial Driver's License

Commercial drivers are ineligible for nonadjudication on a DUI 1st offense. DUI 2nd offenses and any subsequent offenses are governed by §63-1-216.

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