



Meeting Minutes

Colorado State Patrol Academy
 15055 S. Golden Road
 Carrell Hall, Building 100
 Golden, CO
 March 16, 2018, 9:00 am – Noon

Call to order: 9:05 am

Quorum: 15 of 21 members

Introductions

Legislative Remarks: None

Public Comments: None

Minutes of Previous Meeting

Motion to accept Aylmer, Lanzer

Statistics - State Fatality Numbers – Glenn Davis, CDOT

CDOT's computers have been down 21 days so comparison data is not available.

2018 statewide data as of 3/15/18, 89 fatalities statewide.

CDOT continues to get data for 2017, current fatalities for the year are 650. The total for 2016 was 608.

This year, Colorado qualifies as a low range state for fatalities for NHTSA funding decisions.

Legislation – Fran Lanzer, MADD/ Glenn Davis, CDOT

Bill	Title	Prime Sponsors	Last Action	Upcoming Schedule	Link	Status
HB18-1092	Marijuana Delivery Pilot Project	Rep. J. Melton Rep. J. Singer Sen. T. Neville	02/14/2018 House Committee on Finance Refer Amended to Appropriations	House Appropriations; 3/16 at 8:00am	http://leg.colorado.gov/bills/hb18-1092	In Progress
HB18-1258	Marijuana Accessory Consumption Establishments	Rep. J. Singer Rep. J. Melton Sen. T. Neville Sen. S. Fenberg	02/26/2018 Introduced in House - Assigned to Finance	House Finance; 3/19 at 1:30pm	http://leg.colorado.gov/bills/hb18-1258	In Progress
SB18-059	Public Safety Information-sharing System	Sen. R. Fields Rep. D. Pabon	03/5/2018 Senate Committee on Judiciary Refer Amended to Appropriations	Not calendared yet	http://leg.colorado.gov/bills/sb18-059	In progress
HB18-1204	Financial Responsibility	Rep. S. Beckman	03/8/2018 House	None	https://leg.colorado.gov/bills/hb18-1204	Failed

	Drivers Motor Vehicles		Committee on Judiciary Postpone Indefinitely			
SB18-053	Primary Offense For No Safety Belt	Sen. L. Court Rep. D. Young	01/24/2018 Senate Committee on State, Veterans, & Military Affairs Postpone Indefinitely	None	http://leg.colorado.gov/bills/sb18-053	Failed
SB18-186	Allow Retail Marijuana Store To Sell Consumables	Sen. V. Marble	03/14/2018 Senate Committee on Business, Labor, & Technology Committee Vote - Final Action Failed	None	http://leg.colorado.gov/bills/sb18-186	Failed

Presentation on the Marijuana Delivery Pilot Project: Allyson Davis, Eaze and Joe Megysy, Good Chemistry
This bill allows three municipalities to opt into a pilot marijuana delivery project. There is broad authority for each municipality to promulgate the rules for their pilot. Delivery is already allowed in California, Nevada, Florida, and Oregon. Supporters believe that this program will lead to a reduction in drugged and/or impaired driving. There is still a black market in Colorado operating as a delivery service. They also believe this will provide a more regulated product. Allyson Browne’s company, Eaze, has facilitated over 2M deliveries since 2014 in California. Protections are built in for drivers and consumers and there is a strong relationship with law enforcement.

Griffin: Are you a cashless system?

Answer: Eaze was cash only for a couple of months but have turned credit card access back on. They would like to work towards a cashless system but are not able to at this time. Because they are a technology vendor they can process credit cards with an agreeable vendor in California. Individual dispensaries might have trouble.

Johnson: Are you looking for three?

Answer: Up to three. City of Denver and Aurora have expressed an interest.

Johnson: How do you select the dispensary?

Answer: Licensed application process. Point of sale will have to still occur at a licensed dispensary.

Johnson: What are the checks and balances to ensure it is a lawful sale?

Answer: Authority left to the Marijuana Enforcement Division. Must be a physical address with age verification.

When individuals sign up they must upload valid ID. They must also show the same ID to the delivery driver.

Deliveries are limited by geo-fencing.

Johnson: How are you going to make sure the ID presented isn’t fraudulent?

Answer: In California they do onboarding training and work with law enforcement to help train on identifying fraud.

Eaze also has rolled out a bar code scanner.

Johnson: Can an out of state person purchase?

Answer: In CA they could purchase if they were registered with Eaze. Registration talks about 12 hours.

Johnson: How much can someone buy?

Answer: There are caps on how much a delivery driver can have. Limitations should mirror the limits at dispensary.

Current law for physical dispensary is quantity in one business day.

Casias: A bar is a physical address, how do you prevent it from being delivered to a restaurant parking lot/bar or a college dorm?

Answer: Many college campuses have made marijuana illegal, those places would be geofenced. You have to be in an eligible delivery zone.

Megysy: They have met with the Police and Sherriff’s association recently as well as the State Patrol.

Hanock: What data have you collected to assess whether it does take users off the road?

Answer: Eaze has been operational in CA since 2014. Initially there was a drop but it has flattened out. Is Colorado not looking at the data? That is why the Marijuana Enforcement Division is in charge of making the rules. While it is not in the bill the State has broad authority.

Wells: May a driver that delivers to a residence with a lot of minors refuse to deliver?

Answer: In CA drivers are trained to identify red flags and each has the authority to not make the delivery and the info is shared with Eaze and the dispensary.

Coombes: How is safety and compliance accomplished on the road? Dispensary has the ability to see their fleet of drivers. This information is shared with law enforcement if needed. Two layers of monitoring Eaze and the dispensary. Still not a live video capture of the transaction? Last year it came up and they are willing to discuss it.

Hancock: How are drivers employed?

Answer: They must be a (hourly) badged employee. In CA they are being paid a living wage so are not reliant on tips.

Casias: What if I call at 9 am for maximum purchase?

Answer: If you were try to purchase again you would be denied.

What prevents a person from getting in a car to go to a different dispensary to purchase?

Answer: She does not believe that there are things in place to prevent this with brick and mortar stores.

Davis: Appreciates the robust discussion. He mentioned that the state is opposed.

Hutfless: Provided additional information regarding the use of interlock testing (see attachment).

He is not here to advocate a position but to present facts. He provided additional analysis which was shared with the Task Force. Rebecca will share this material in the post meeting email she sends out. No sponsor for the bill yet but he has support from across the state.

Mitchell: DOR will be neutral. CODOR uses national best practices. Manufacturer instructions state they must pull over.

Hutfless: Best practices are focused on impaired driving. This is not referring to distracted driving, it is a matter of receiving a text message.

Hutfless: The number of Interlocks have gone up as well as the number of fatalities. You would expect that impaired driving fatalities would have gone down. When a fatality is attributed to impaired driving it may be due to something else.

Davis: Distracted Driving bill passed in the 2017 session. Section 6B, has put the State in a bind because you have to show that you are being careless while texting.

Media Relations & Significant Upcoming Events – Sam Cole, CDOT

Today is the first day of the St. Patrick's Day enforcement.

Yesterday three task force members participated in a Cannabis Conversation in Pueblo. Between 30 and 40 students and community members shared their thoughts.

April is the month that the Distracted Driving campaign "Get Turned On" will start. The aim is to get people to turn on the "Do Not Disturb" function on their phones.

Yesterday NHTSA had a Summit held in DC. Drugged/impaired driving is coming to the forefront. Some of the things that came out of the Summit: Change must come from the executive level; there is a need to hold regional DUID summits; and the use of oral fluid testing may create some process efficiencies for law enforcement.

Davis: If there are additional meetings the HSO and the Task Force would like to be included. There was an article in Police Chief Magazine that included information from Chief Ticer. Rebecca will send the article out to everyone once she receives it.

Break: 10:50

Task Force Business & Presentations

Program Management & Strategic Planning – Glenn Davis

Group met. See Presentation

Criminal Justice – Deputy Chief Steve Johnson

Whitney- Haven't met yet this year.

Prevention – Ellen Anderson

The work group is going to meet in person in April. Gordon Coombes and Curtis Hancock have joined the work group. Ginna Jones and Kacy Crawford have provided a summary of data on binge drinking which has created a lot of discussion. She hopes that people will come to the meeting prepared to discuss topics for the year.

Impaired Driver Intervention & Treatment – Christine Flavia

Met February 21, 2018, to work on the L2 4+ competencies. There is a need for some additional work so the group will meet again on 3/28. She expects to be done with the first version of the document at that point. The competencies will be a fluid document, especially as the program develops. Last month, implementation meetings were held throughout the state. The fourth meeting is today up in the Vail area. These meetings are designed to help providers problem solve. Another round will be coming up in April.

Communication – Sam Cole

Work Group meeting will be held in April. Doing his best to stay in touch with State Patrol and Fran on the Cannabis Conversation and breathalyzer campaign.

Program Evaluation & Data – Jack Reed

The work group will be meeting prior to the next task force meeting.

Lightning Round Update

Aylmer: Regarding the tasting room bill-the restaurant industry is opposed to the bill

Timkin: He has recently completed the submission of three grants.

Gagarin: There were 100 fatal crashes caused by springing forward.

Groff: His family has a business in COS and his brother has a radio show called the “710 Show”. On the first show he had an officer on to discuss the fallen officer fund. The second show Jeff spoke about alcohol consumption. Master Trooper Dave Conrad was on yesterday to talk about State Patrol’s message, and in April, Sam Cole is going to be on messaging the Drive High Get a DUI campaign. The show is 30 minutes at 7:10 am Saturdays sponsored by Groff’s Automotive.

Casias: trying to lobby to have Obh present at the judicial conference.

Anderson: When is Canada going legal? Sometime this summer although it might be held until October.

Gordon: He attended last month’s meeting and has been talking about expanding the Task Force to include Prevention. He has representative support to both draft and introduce a late bill. If there are other fields that should be represented that aren’t included to let him know. Currently, he will include substance abuse prevention.

Davis: If anyone has any other ideas please send them to Glenn and Rebecca. Ideas shared with the group: another representative from the marijuana industry; someone from medical community; someone from the Western Slope rural/frontier area; and someone from DOR that does marijuana enforcement.

Davis: Can Gordon draft something and find out a timeline from Rep Ardnt. Statute has been opened only once before.

Graham: Early this week NHTSA was part of a class sponsored by AAA attended by prosecutors and DRE from four states as well as the National Forest Service.

Demont: dashboard on the health department website. Individuals can query the data base to help with CDOT RFA or other projects.

Glenn: This is a statewide task force and Glenn would like to consider meeting outside of the metro area. One or two meetings in a different parts of the state. Maybe a la

Lanzer: The deadline to introduce a bill in the 2018 legislative session is April 19th, prior to the next meeting.

Meeting adjourned: 11:30

Motion by Aylmer, Casias

Next Meeting:	April 20, 2018
Next Meeting Time:	9:00-12:00pm
Next Meeting Location:	Colorado State Patrol Academy 15055 S. Golden Road Carrell Hall, Building 100, Golden, CO

In attendance:

- Glenn Davis, CDOT, Vice Chair
- Rebecca Novak, Colorado State Patrol, Secretary
- Benjamin Mitchell, DOR-DMV
- Fran Lanzer, MADD Colorado
- Gene Giron, Miller Coors
- Michael Steppat, Wine & Spirit Wholesalers of CO

Paul Aylmer, CO Restaurant Asso.

David Timkin, CIDRE
Christine Flavia, OBH
Katie Wells, OBH
Daniel Gagarin, Public Defender
Ben Whitney, Weld Co. DA/CDAC
Ed Casias, SCAO/Summit County Courts
Steve Johnson, DCSO/CO Sheriffs Asso
Dan Griffin, Attorney General – POST
Lyndsay Markham, DOR/DMV
Sarah Strasser, DOR/DMV
Ellen Anderson, Retired PCSO/Tipsy Taxi
Curtis Hanock, OBH
Gordon Coombes, Team Wellness and Prevention
Katie Hecker, SCAO, Problem Solving Courts
Christine Demont, CDPHE
Michael Fabian, Creative Treatment Options
Frederick Cobb, Lifesaver/Guardian IID
Frank Hutfless, Citizen
Sam Cole, CDOT
Laura Sonderup, Hispanidad
Matt Sonderup, Hispanidad
Wes Melander, Citizen
Jared Torsney, POST
Becky Bui, DCJ
Jack Reed, DCJ
Jill DeRoehn, Denver Co. Court Probation
Al Graham, NHTSA Region 8
Joe Megyesy, Good Chemistry
Stacy Roseniove, MIG
Allyson Browne, Eaze



Colorado Task Force on Drunk & Impaired Driving

Program Management and Strategic Planning

- The Program Management and Strategic Planning Committee ensures that the CTFDID is properly represented by strong leadership and that meetings and sub-committees utilize sound policy development, program management, problem identification, strategic planning, and an effective communication program.

The Program Management and Strategic Planning Committee takes the lead in:

- Providing information so that CTFDID meetings can focus on data-driven discussions
- Creating meeting agendas
- Facilitating meetings & sub-committee meetings
- Arranging for subject matter experts to present information
- Creating and distributing the final CTFDID annual report
- Coordinating with local Impaired Driving Task Forces
- Securing resources and informing CTFDID partners and stakeholders on resource availability
- Overseeing and implementing a comprehensive communications program that coincides with the mission and vision of the CTFDID



Application Process for Highway Safety Funding

Applications for funding due to OTS on April 9, 2018 by 3:00 pm

<https://www.codot.gov/business/grants/safetygrants/ots-funding-opportunities>

- ✓ RFA
 - ✓ Project Application Instructions and Template
 - ✓ Detailed Budget Template and Instructions
 - ✓ Score Sheet
 - ✓ Data Sources
-



Application Process

- Funds available through FAST Act
 - Must address one of 14 Core Performance Measures
 - Projects are for Federal Fiscal Year 2019
 - October 1, 2018 through September 30, 20193 Year Funding Cycle
 - Three Year Funding Cycle - Funded Year to Year - Based on Performance
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Application Process

Applications must

- Clearly state the problem to be addressed
- Be supported by local, relevant data
- Identify the target population
- Provide baselines to measure project impact
- Show impact on one or more core performance measure





NHTSA Performance Measures

- C-1. Reduce the number of traffic fatalities
 - C-2. Reduce the number of serious injuries in traffic crashes
 - C-3. Reduce the fatalities per Vehicle Miles Traveled (VMT)
 - C-4. Reduce the number of unrestrained passenger vehicle occupant fatalities, all seat positions
 - C-5. Reduce the number of fatalities in crashes involving a driver or motorcycle operator with a BAC of .08 and above
 - C-6. Reduce the number of speeding-related fatalities
 - C-7. Reduce the number of motorcyclist fatalities
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NHTSA Performance Measures

- C-8. Reduce the number of unhelmeted motorcyclist fatalities
 - C-9. Reduce the number of drivers age 20 or younger involved in fatal crashes
 - C-10. Reduce the number of pedestrian fatalities
 - C-11. Reduce the number of bicyclist fatalities
 - C-12. Reduce the number distracted drivers involved in fatal crashes
 - C-13. Reduce the number of drivers age 65 and older involved in fatal crashes
 - C-14. Reduce the number of fatalities in crashes involving a driver or motorcycle operator testing positive for drugs
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Application Process Timelines

March 5

RFA Released

April 9, 2018 by 3:00 PM

Applications Due

May 7, 2018
Selection

Final Application

By May 14, 2018
Funding Decisions

Notification of

May 25, 2018
Requests Due

Reconsideration

May 30, 2018
Decisions

Final Reconsideration



Contact Information

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PROPOSED AMENDMENT TO CRS 42-2-132.5(9)

March, 2018

Prepared and Submitted by Frank Hutfless (cell 720-202-5225) -- Former Jefferson County Attorney, Garfield County Attorney, Executive Vice President and General Counsel (banks and subsidiaries for the \$57 billion Farm Credit System), Nebraska Deputy Attorney General, Trial Judge (County Courts, Nebraska 16th Judicial District); President, Colorado County Attorneys Association; President, Farm Credit System General Counsels

PROPOSED AMENDMENT

CRS 42-2-132.5(9) MUST BE IMMEDIATELY AMENDED TO MITIGATE DISTRACTED DRIVING AND IMPROVE PUBLIC SAFETY BY REQUIRING VEHICLE IGNITION INTERLOCK DEVICES TO BE USED ONLY FOR VEHICLE STARTING, AND DELETE THE STATUTORY LANGUAGE REQUIRING INTERLOCK DEVICES TO TAKE "ADDITIONAL BREATH SAMPLES DURING OPERATION."

SUMMARY OF THE REASONS FOR THE PROPOSED AMENDMENT

1. CRS 42-2-132.5(9) ("Section 132.5(9)") requires driver breath tests to be taken during vehicle operation. The tests are commonly referred to as "random rolling retests," and include noise, text message and command distractions that are directed at the driver from a small, difficult to read, interlock video screen.
2. In effect, compliance with Section 132.5(9) causes drivers to violate CRS 42-4-239 ("Section 239"), which makes it a crime to engage in distracted driving.
3. In the unlikely event that a court determines distracting interlock noises, text messages and commands occurring during "random rolling retests" under Section 132.5(9) are not a criminal violation under Section 239, those noises and texts are nevertheless dangerous distractions that compel immediate driver action and increase the likelihood of crashes and fatalities.
 - a. the national Highway Transportation Administration (NHTSA) and the Colorado Department of Transportation (CDOT) definitions of driver "distractions" would be interpreted to include ignition interlock devices;
 - b. in January, 2018, distracted driving was described by the CDOT Executive Director as an "epidemic" that, in 2017, included 14,600 crashes and 70 deaths in Colorado; and

c. objective factual analysis and studies by various states (including Colorado) and universities show that ignition interlock devices are ineffective and dangerous when used in a moving vehicle:

- i. Colorado DMV (“DMV”) records show that the use of vehicle ignition interlock devices for random rolling tests has not reduced dui-related fatalities in Colorado – in fact, although the use of ignition interlock devices increased by 29% over 2017, DUI-related fatalities still increased more than 16%;
- ii. according to a recent California DMV report to the California Legislature, the risk of crashes is up to 130% higher for offenders using an interlock for “random rolling retests;” and
- iii. a driver taking his/her eyes off the road for more than two seconds doubles the risk of a crash (Virginia Tech Transportation Institute); and a distraction for 5 seconds at 55 MPH is like driving the length of a football field with your eyes closed (NHTSA).

DISCUSSION

Interestingly, when interlock devices first came on the scene, they were only used to start the car, then later manufacturers built in a process referred to as the “random rolling retest.” As the name implies, it is intended to compel random breath tests by the driver while operating a vehicle. In Colorado, the requirement for a “random rolling retest” is found in Section 132.5(9), which requires some vehicles to have interlock ignition devices installed to measure “the breath alcohol content of the driver before a vehicle is started and periodically requires additional breath samples during operation.”

Requiring breath samples to check for alcohol and drug use before starting a vehicle may be sound public policy but requiring periodic testing at random times during vehicle operation is not. In fact, the Section 132.5(9) requirement for a “random rolling retest” likely violates Section 239, which is intended to mitigate the hazards of distracted driving by making texting while driving a crime.

Under Section 239, it is a misdemeanor to send or read text messages while driving. Given the legislative intent to mitigate the hazards of distracted driving, Section 239 would likely apply to prohibit sending or reading texts transmitted by devices such as cell phones, iPads, laptop computers, televisions, or any other device, such as an interlock, that employs video screens to provide a driver with text messages (see, for example, the underlying legislation, SB 17-027, signed into law by Gov. Hickenlooper on 06/01/2017).

In fact, ignition interlock sound and text distractions are substantially more dangerous than a cell phone, iPad or computer because those communication devices can be turned off, put away in an instant and ignored for hours. But the interlock cannot be turned off and its text commands cannot be ignored. They must be immediately addressed, one way or another.

When the interlock device causes a driver to attempt a breath test while driving, or respond to

its text commands by searching for a place to stop out of harm's way, the driver's reaction is, in either case, a response to a distraction caused by the interlock device while the car is moving.

Because an interlock device has a video screen similar to a cell phone (but smaller and harder to read than a cell phone) and conveys distracting sound, text messages and commands to a driver during vehicle "operation," the Section 135(9) requirement for the driver to provide "breath samples during operation" probably compels the driver to commit a crime under Section 239 by engaging in distracted driving prohibited by that Section.

It has been argued that a violation of Section 239 may be avoided by pulling off the road because texting while parked or paused on the side of the road is not a crime under that Section. But that argument has little, if any, merit because it ignores the fact that texting while driving has already occurred: the interlock noises and text messages and commands distracting the driver, and the driver's continued distraction, all occur prior to, and during any driver attempt to safely leave the road.

It is astounding that the interlock industry claims the devices are not a distraction to drivers because they only require the driver to quickly provide a breath test in response to a few pleasant sounds. That is marketing at its worse, and a clear misrepresentation of the facts.

Contrary to the foregoing misrepresentations, ignition interlock devices have a small video screen by which numerous text directions and commands are sent to the driver at random times while the vehicle is moving. In addition, the device emits noises that serve as a further distraction. Those noises and texts require focused attention and action by the driver.

While moving, the driver is commanded to provide a breath sample that must include an exhaled air velocity, vocal hum, pitch and volume that is acceptable to the device. Failure to meet the device breath and hum requirements will result in interlock text instructions to: "blow, blow harder, blow softer, blow longer, hum louder, please wait, verifying, analyzing, pass, or fail." Variations of those text messages and commands will be repeated until the driver either passes or fails the breath test or the time for completing the test has expired.

If the driver does not blow into the interlock device while simultaneously humming at a pitch and volume acceptable to the device, and within the timeframe allowed by the device for test completion, the device will cause the vehicle lights to flash and horn to blow, causing a dangerous distraction to the driver and other vehicles. The driver's distraction can be anticipated to intensify as attempts to "pass" the interlock test, and looking anxiously at interlock screen commands, are attempted while driving or searching for a safe place to stop.

According to the January, 2018, statement of CDOT Executive Director, Shailen Bhatt, there is an increase in fatalities due to an "epidemic of distracted driving." The numbers support that conclusion. According to CDOT, in 2017 there were 14,600 crashes (not just arrests) due to distracted driving, including 70 fatalities.

The Director also stated that “the behavioral stuff is not something that we can move the needle on drastically, except for our education programs.” That “behavioral stuff” includes the “human nature” of drivers to continue driving while responding to interlock text commands, rather than leave the road to attempt compliance. In fact, leaving the road to provide a breath test may not be the best choice because that action, and stopping on the roadside, creates additional hazards for the driver and other traffic (consider, for example, the continuation of the interlock distraction while attempting to leave the road, and “rubbernecking”); and joining traffic (especially fast-moving traffic) from a stop on the shoulder is hazardous.

A study done by the California Department of Motor Vehicles entitled An Evaluation of the Effectiveness of Ignition Interlock in California, Report to the Legislature of the State of California in Accord with Assembly Bill 762, Chapter 756 concluded that **“The relationship between ignition interlock devices and crashes changes when crashes are examined for offenders who installed an interlock device. Surprisingly, the two analyses that examined this both showed that the risk of crashes was higher for offenders installing an interlock.”**

The study also concluded that “interlock devices had no statistically significant effect in preventing subsequent drunk driving convictions, but they increase their users’ general crash risk by up to 130%.”

Those conclusions are consistent with Colorado statistics. According to the Colorado DMV, the number of vehicle-installed interlock devices increased by 26% in 2017. But according to CDOT, the number of DUI fatalities in 2017 increased 16% over 2016, so the success of the interlock program in reducing alcohol or drug-related fatalities is questionable because a successful program would expect to achieve a reduction of dui-related fatalities as interlock use increased. But that is not the case. As interlock use increased, dui fatalities have also increased.

In light of the California study and CDOT and Colorado DMV records, it would be prudent to mitigate distracted driving caused by interlock devices during “random rolling retests” by limiting the use of those devices to starting a vehicle motor and repealing the Section 132.5(9) requirement to randomly test breath during vehicle operation. There is additional support for repealing the Section 132.5(9) “random rolling retest” requirement.

The AAA National Motorists Association 2013 opinion, The Ignition Interlock Device – A Dangerous Handheld Device (2014) states:

The sequence of events involved not only in manipulating the device but providing the correct steps in the right sequence to provide a breath sample [for example, blowing at the right velocity and humming at the right pitch and volume], employ a considerable mental and physical effort...**Taken together, all at the same time, will result in an unacceptable distraction possibly resulting further in an accident.**

The time frame for providing a sample for the rolling retest can result in considerable driver distraction...for a reason that may be totally unrelated to a breath sample failure,

such as dropping the hand-held device, not completing the breath test on time, being hemmed in, in heavy traffic, or attempting to enter or exit a busy freeway.

[In addition], if a driver fails the rolling retest, the cacophony of horn blaring and lights flashing will surely cause increased stress levels and distraction inside the vehicle for both driver and passenger(s) and for other drivers in the vicinity.”

In its 2015 Policy on Distracted Driving, NHTSA emphasized that “distracting driving is dangerous [and] NHTSA leads the national effort to save lives by preventing this dangerous behavior.” NHTSA describes “distracted driving” as “any activity that diverts attention from driving.” As NHTSA further explains, “sending or reading a text takes your eyes off the road for 5 seconds...at 55 mph, that’s like driving the length of an entire football field with your eyes closed...any non-driving activity you engage in is a potential distraction and increases your risk of crashing.” According to the Virginia Tech Transportation Institute, a driver taking eyes off the road for more than two seconds doubles the risk of a crash.

CDOT’s definition of distracted driving mirrors NHTSA’s. See, for example, CDOT’s web page (www.codot.gov) where “distracted driving” is defined as “the act of driving while engaged in **anything** – texting, looking after children or pets, talking on the phone or to a passenger, watching videos, eating or reading – **that takes a driver’s focus away from the road.**”

Any driver distraction is dangerous, so regardless of whether interlock text commands during vehicle operation cause a violation of Section 239, the interlock noise and text messages and commands are, by definition, dangerous driving distractions.

Certainly, it is important to take reasonable legislative action to prevent driving under the influence of alcohol and drugs. But legislation must not create a situation where one law requires a driver to violate another law, such as the “random rolling retest” required by Section 132.5(9) that is likely a criminal violation under Section 239.

On the other hand, even if a court did not agree that Section 132.5(9) causes a violation of Section 239, interlock text and noise messages commanding drivers to take action during vehicle movement are clearly dangerous distractions that must be eliminated.

PROPOSED AMENDMENT

42-2-132.5. Mandatory and voluntary restricted licenses following alcohol convictions – rules

(9) Approved ignition interlock device definition - rules. (a) For the purposes of this section, "approved ignition interlock device" means a device approved by the department of public health and environment that is installed in a motor vehicle and that measures the breath alcohol content of the driver only before a vehicle is started, ~~and that periodically requires additional breath samples during vehicle operation.~~ The device may not allow a motor vehicle to be started ~~or to continue normal operation~~ if the device measures an alcohol level above the level established by the department of public health and environment.