DEPARTMENT TRAFFIC COORDINATOR
COUNTER-TERRORISM AND SPECIAL OPERATIONS BUREAU

NOTICE June 30, 2015
16.2

TO: All Commanding Officers

FROM: Department Traffic Coordinator, Counter-Terrorism and Special Operations Bureau

SUBJECT: IGNITION INTERLOCK DEVICES - REMINDER

PURPOSE

The purpose of this Notice is to provide guidance for field officers who encounter a driver who is required to have or has an Ignition Interlock Device (IID) installed inside the vehicle they are operating.

BACKGROUND

Research studies have revealed that IID can lead to a reduction in the rate of repeat drunk driving offenses. In the past, an IID was ordered by the court during the sentencing phase of a driving under the influence (DUI) trial. However, the California legislature recognized the benefits of the IID and enacted Section 23700 "Ignition Interlock Device Pilot Program" of the California Vehicle Code (CVC), which authorizes the Department of Motor Vehicles (DMV) to require all individuals convicted of DUI in Alameda, Los Angeles, Sacramento, and Tulare Counties to install an IID. The term of the pilot program is from July 1, 2010 to December 31, 2015.

When an IID is required to be installed, the DMV will make a notation of "DMV Ordered IID Required per CVC 23700" advising of the restriction above or below the "License Status" field of an individual's driving record. Upon installation, the IID requires the individual convicted to provide a breath sample without any measurable amount of alcohol in their system in order to start the vehicle, and at random times in order to continue driving. The IID only detects blood alcohol concentration and does not test for other drugs. Currently, there are no IID for motorcycles, and consequently the State does not permit an individual with a driver license with an IID restriction to drive any personal motorcycles.

In addition to DUI convictions, the DMV is required to impose an IID restriction on the driving privilege of an individual convicted of driving with a suspended or revoked license for a DUI conviction as delineated in Sections 14601.2, 14601.4 or 14601.5 CVC.

Note: The IID installation does not apply to individuals convicted of Section 23103 "Reckless Driving" CVC. However, individuals convicted under this Section as a substitute for a DUI conviction can choose to end their one-year administrative per se (APS) suspension after 90 days and apply for a driver license with an IID restriction.

PROCEDURES

When an officer conducts a traffic stop and determines that the driver is required to have or has an IID installed in their vehicle, the following CVC Sections and Penal Code (PC) Section are all applicable and are classified as misdemeanors offenses:

Section 23247 CVC – IID Restrictions

- 23247 (a): Unlawful to knowingly rent, lease or lend a vehicle to another person who is known to have their driving privilege restricted as required by Section 13352, 23575 or 23700 VC unless the vehicle is equipped with a functioning, certified IID.

- 23247 (b): Unlawful for anyone person whose driving privilege is restricted pursuant to Section 13352, 23575 or 23700 to request or solicit another individual to blow into an IID or to start a motor vehicle equipped with the IID for the purpose of providing the person with the IID restriction to start a vehicle.

- 23247 (c): Unlawful to blow in an IID or start a motor vehicle equipped with the IID for purpose of providing an operable motor vehicle for an individual with an IID restriction.

- 23247 (d): Unlawful to remove, bypass, or tamper with, an IID.

- 23247 (e): Unlawful for any person who is required to have an IID to operate any motor vehicle not equipped with a functioning IID.

Section 23573 CVC – Ignition Interlock Compliance

- 23573 (i): Failing to install an IID within 30 days.

Section 14601 CVC – License Suspensions/Restrictions

- 14601.2(a): Driving with a license suspended for DUI (regardless if the vehicle is equipped with an IID).

- 14601.2(b): Driving a vehicle outside of restrictions (operating a vehicle without IID or out of compliance with to/from/course of employment restrictions).

  Note: This Section is applicable for drivers with a valid license.

- 14601.4(a): Driving a vehicle with a suspended license, and causing a traffic collision which causes bodily injury to a person besides the driver (regardless if the vehicle is equipped with an IID).

- 14601.5(b): Driving out of compliance of a restriction required for a commercial license or "critical need" exemption stemming from a DUI conviction.

  Note: This Section is applicable for drivers with a valid license.

Section 23154 CVC – DUI Probation

- 23154 (a): Unlawful for a person on probation for DUI to operate a motor vehicle with a blood-alcohol concentration of 0.01 percent or greater, as measured by a preliminary alcohol screening device or other chemical test.

- 23154 (c)(1): A person on probation for DUI who drives a motor vehicle is deemed to have given their consent to a preliminary alcohol device or other chemical test for the purpose of determining the presence of alcohol in the person.

California Penal Code

- 1203.2(a): Violation of Probation

  Note: This section is not considered a bookable offense. Consequently, additional filing for this section should be requested in the Arrest Report.

Enforcement Options

Officers taking enforcement action on any of the aforementioned CVC sections have various options at their discretion. An officer may book the individual, cite the individual on a Release from Custody (RFC) or cite the driver on a Traffic Notice to Appear.

Impound Options

The decision to impound the vehicle shall adhere to the impound policies and procedures established in Special Order No. 7 "Community Caretaking Doctrine and Vehicle Impound Procedures," dated April 12, 2012.

However, a 30-day impound is warranted under Section 14602.6 (a)(1) CVC. This section states that, "Whenever a peace officer determines that a person was driving a vehicle while his or her driving privilege was suspended or revoked, driving a vehicle while his or her driving privilege is restricted pursuant to Section 13352 or 23575 and the vehicle is not equipped with a functioning, certified interlock device, or driving a vehicle without ever having been issued a driver' s license, the peace officer may either immediately arrest that person and cause the removal and seizure of that vehicle or, if the vehicle is involved in a traffic collision, cause the removal and seizure of the vehicle without the necessity of arresting the person in accordance with Chapter 10 (commencing with Section 22650) of Division 11. A vehicle so impounded shall be impounded for 30 days."

DMV Notifications

When an enforcement action is to be taken, an Officer's Statement, DMV Form 367, needs to be completed and mailed to the DMV. The pink copy of the DMV Form 367 shall be provided to the violator, which will serve as the violator's temporary driver license. The DMV Form 367 is required to be delivered to the appropriate DMV Driver Safety Office within five business days.

Exceptions to IID Requirement

The only exception to the IID requirement is when an individual is driving a work vehicle that is owned by their employer and is being operated during the course of their employment. Per Section 23576 "Vehicle owned by employer" of the CVC, an individual may operate a vehicle without the installation of an IID provided that the individual notified their employer of their restricted driving privilege and the individual has proof of the notification in their possession. The DMV will provide a driver with a "Notice to Employer" (DL 923) form, for an employer that should be maintained by the employee as proof of the employer's notification (see attached).

Note: An individual who does own a vehicle may request an IID exemption from DMV or the court. However, this exemption does not authorize the individual to drive a vehicle not equipped with an IID.

Department Employees

Department employees who have been convicted of DUI are required to follow all of the aforementioned statutes and there are no law enforcement exemptions. Department employees whose driving privilege has been restricted pursuant to Section 23700 CVC and are required to have an IID installed in their personal vehicle, shall obtain a DL 923 "Notice to Employer" and submit the DL 923, along with an Employee's Report, Form 15.7.00, to notify their commanding officer of this restriction. The employee shall make a notation in the Employee's Report that they have a restricted driver license that requires an IID in order to operate a motor vehicle and the termination date of this restriction.

In a recent opinion, the Los Angeles City Attorney's Office has opined that Section 23576(a) CVC enables individuals whose driving privilege has been restricted pursuant to Sections 23575 and 23700 CVC, to operate a motor vehicle owned by their employer in the course and scope of their employment without an IID. Therefore, an employee with a driver license with an IID restriction may operate a City/work vehicle without an IID, if the employee has notified their commanding officer in writing in the manner as provided above and proof of the employer's notification is maintained in the employee's possession while operating a City-owned vehicle.

If you have any questions regarding this Notice, please contact Traffic Coordination Section, Emergency Operations Division, at (213) 486-0690.

APPROVED:

MICHAEL P. DOWNING, Deputy Chief
Department Traffic Coordinator
Counter-Terrorism and Special Operations Bureau

SEAN W. MALINOWSKI, Commander
Chief of Staff
Office of the Chief of Police

Attachment

DISTRIBUTION "B"

923

A Public Service Agency

NOTICE TO EMPLOYERS
IGNITION INTERLOCK RESTRICTION

SECTION I DRIVER INFORMATION

DRIVER'S NAME (FIRST, MIDDLE, LAST) | SUFFIX (JR., SR., III)

SECTION II INSTRUCTIONS TO DRIVER

You are required to provide this notice (or its equivalent) to any employer who owns a vehicle that you operate in the course and scope of employment with that employer. You are also required to keep this notice in your possession or with your employer's vehicle.

YOU MAY NOT DRIVE WITHOUT A VALID DRIVER LICENSE.

SECTION III NOTICE TO EMPLOYER - RETAIN A COPY OF THIS NOTICE FOR YOUR FILES

This is to inform the employer(s) of the above named driver that he/she is required to have installed in any vehicle(s) that the driver operates, an ignition interlock device pursuant to §13352 of the Vehicle Code (VC).

§23576 VC provides:

> "[I]f a person is required to operate a motor vehicle in the course and scope of his or her employment and if the vehicle is owned by the employer, the person may operate that vehicle without installation of an approved ignition interlock device if the employer has been notified by the person that the person's driving privilege has been restricted...and if the person has proof of that notification in his or her possession, or if the notice, or a facsimile copy thereof, is with the vehicle."

However, if a business entity is totally or partially owned or controlled by the person subject to this restriction, then the person is not eligible under §23576 VC to drive a vehicle without an ignition interlock device installed.

This notice satisfies the requirements of §23576 VC.

SECTION IV EMPLOYER INFORMATION *(PRINT IN INK ONLY)*

EMPLOYER'S NAME

BUSINESS NAME | TELEPHONE NUMBER

BUSINESS ADDRESS (STREET)

CITY | STATE | ZIP CODE

SECTION V EMPLOYER'S USE ONLY

I certify under penalty of perjury under the laws of the State of California that I have been notified by my employee as required pursuant to §23576.

EMPLOYER'S SIGNATURE | DATE

Distribute copies as follows:

Original: Employer
Copy : Driver