

Rhode Island DUI Conditional Hardship Licenses: The Sequel



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There are still unresolved issues with the ignition interlock statute, but these recent changes by the Rhode Island General Assembly demonstrate that they are keenly aware of the need to continue to refine the statute.

On June 24, 2016, the Rhode Island General Assembly enacted new legislation amending R.I. Gen. Laws 31-27-2.8 (“ignition interlock statute”). The new statute permits individuals convicted of drunk driving pursuant to R.I. Gen. Laws 31-27-2 (“DUI statute”) and refusal to submit to a chemical test pursuant to R.I. Gen. Laws 31-27-2.1 (“refusal statute”) to be granted a conditional hardship license (“CHL”) in specific instances. The new statute contains language that is both more and less restrictive than the prior version of the statute, which took effect on January 1, 2015. The new statute includes three (3) new distinctions.

The first distinction is the removal of judicial discretion in most cases. Under the prior ignition interlock statute, “the sentencing judge or magistrate **may** grant the person a conditional hardship license.”¹ The new statute requires the granting of a conditional hardship license with

a few exceptions. The statutory language reads “the sentencing judge or magistrate **shall**, upon request, grant the person a conditional hardship license.”² There are specific instances in which the judge or magistrate does retain discretion in granting conditional hardship licenses. In cases “where a motorist has a prior alcohol-related offense or a prior reckless driving conviction under § 31-27-4

or reckless eluding conviction under § 31-27-4.1, within the prior ten (10) years of the offense, or when the instant offense involves a motor vehicle accident, the judge or magistrate may exercise their discretion in the granting of the hardship license by imposing up to a ninety (90) day loss of license prior to any imposition of the hardship license.”³ In DUI cases with blood alcohol content (“BAC”) readings of .15 or over, “the judge or magistrate may exercise his or her discretion in the granting of the hardship license by imposing up to a six (6) month loss of license prior to any imposition of the hardship license.”⁴

The second distinction is the expansion of eligibility to obtain a conditional hardship license. Under the prior statute “[s]aid hardship

license shall be valid only for twelve (12) hours per day to get to and from employment.”⁵ The new statute expands beyond employment and permits “necessary medical appointments, job training, schooling, or **any other valid reason** approved in advance by the sentencing judge or magistrate.”⁶ The statute further defines “any other legitimate reaso[n] justifying a hardship license” to include “any unemployment training, schooling, medical appointments, therapy treatments, or any other valid requests.”⁷ The need for the requested conditional hardship license must still be proven through written affidavits.

The final distinction is the ability to obtain a conditional hardship license without entering a plea to either a DUI or refusal charge. Under the prior statute, a person had to be “convicted” before a sentencing judge or magistrate would determine their eligibility for a conditional hardship license.⁸ The new statute allows for a conditional hardship license when entering a plea to the DUI or refusal charge or at the “initial suspension under § 31-27-2.1(b).”⁹ In refusal cases, the initial suspension of a person’s license occurs at the arraignment. In addition, the conditional hardship license can be granted without the installation of the ignition interlock device. The new statute allows “that in a case where a conditional hardship license shall be granted by the sentencing judge or magistrate upon an initial suspension under § 31-27-2.1(b) and prior to the installation of an ignition interlock device, said hardship license shall be issued to the motorist upon proof of installation of an ignition interlock device.”¹⁰ The new statute allows for a motorist to obtain a conditional hardship license and then have the ignition interlock device installed in their motor vehicle. Presumably, the Rhode Island Division of Motor Vehicles (“DMV”) would issue the license upon proof that the device was installed. The ability to obtain a conditional hardship license without entering a plea to any charge is extraordinarily beneficial for the motorist. It allows motorists to maintain their employment while preserving their right to trial. From a practical standpoint, it also allows attorneys the ability to fully obtain and review discovery and discuss the case with a representa-

tive from the Attorney General's office and/or the municipal prosecutor.

The typical motorist requires a hardship license to get to and from their employment. To prove their need for the hardship license, a motorist must provide an affidavit from their employer. Therefore, the motorist must inform their employer that they were arrested and charged with DUI and/or refusal to submit to a chemical test. Depending on the nature of their employment, some motorists may not wish to disclose that prejudicial information.

As previously stated, the granting of the conditional hardship license requires the installation of an ignition interlock device. This device is a miniature breathalyzer machine, which is connected to the ignition of a motor vehicle. A motorist

is required to blow into the machine to activate the motor vehicle. While driving, the motorist is required to blow into the machine at random intervals. The DMV has approved five (5) companies to install these devices.¹¹ Each company charges an installation fee, a monthly monitoring fee, and a removal fee. Although fees vary based on the type of motor vehicle and the duration of the ignition interlock device sentence imposed by the Court, most motorists will pay approximately \$700 to have the device in their motor vehicle.

There are also fees charged by the DMV and imposed by the Court. The minimum fines, fees and assessments for a refusal to submit to a chemical test charge is \$939.25, which consists of a \$200 fine, \$200 Department of Health assessment, \$500 highway safety assess-

ment, and \$39.25 in court costs.¹² The minimum fines, fees and assessments for a DUI with BAC readings of .08, .10-.15 or unknown BAC readings is \$780.50, which consists of \$100 fine, \$500 highway safety assessment, \$86 assessment, and \$94.50 in court costs. The minimum fines, fees and assessments for a DUI with BAC readings of .15 or greater is \$1,225.50.¹³ The DMV imposes a \$351.50 fee for license reinstatement, a \$106.50 fee for having the ignition interlock device, and there is a \$350 fee for the DUI school.¹⁴ The DUI school or alcohol education program is mandated by statute and imposed in both refusal and DUI cases. Also, motorists may be required to pay a registration reinstatement fee of \$251.50.¹⁵

The installation of the ignition interlock device, combined with the court and registry fees, renders this a useful, but expensive option. Even with the new statute, several questions remain. When the device is a mandatory part of a sentence, what happens to a motorist without the necessary funds to pay for the device? What happens to the motorist who does not own a motor vehicle in which to install the device? There are still unresolved issues with the ignition interlock statute, but these recent changes by the Rhode Island General Assembly demonstrate that they are keenly aware of the need to continue to refine the statute. Nevertheless, both the original statute and the amended statute have been extremely beneficial for Rhode Island citizens charged with drunk driving and/or refusal to submit to a chemical test.¹⁶

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ENDNOTES

- 1 R.I. GEN. LAWS 31-27-2.8(b)(7)(emphasis added).
- 2 *Id.*
- 3 R.I. GEN. LAWS 31-27-2.8(b)(7).
- 4 *Id.*
- 5 *Id.*
- 6 R.I. GEN. LAWS 31-27-2.8(b)(7) emphasis added).
- 7 R.I. GEN. LAWS 31-27-2.8(b)(7).
- 8 *Id.*
- 9 *Id.*
- 10 *Id.*
- 11 <http://www.dmv.ri.gov/inspections/interlock/> (last visited September 29, 2016).
- 12 R.I. GEN. LAWS 31-27-2.1
- 13 R.I. GEN. LAWS 31-27-2.
- 14 <http://www.dmv.ri.gov/adjudication/reinstate/ment/index.php> (last visited September 29, 2016).
- 15 *Id.*
- 16 The author expresses his deep appreciation for the assistance of Kimberly A. Petta, Esq., in the preparation of this article. ❖