



# 2012-087

STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

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Ignition Interlock Devices –  
Administrative Office of Courts – Driver’s  
License – Motor Vehicles

The fee provided for by section 32-5A-191(s) of the Code of Alabama applies to a DUI offender under court order to install an ignition interlock device whose license is suspended. The fee does not apply to an offender whose license is revoked. The offender shall pay \$75 per month during the three-month period that the license is suspended.

Under section 32-5A-191.4(g)(6), the court must order an offender who does not own a vehicle, or fails to comply with an install order, to pay the lowest cost of installation charged by ignition interlock device companies approved by the Alabama Department of Forensic Sciences, payable in \$75 monthly installments until paid in full.

Dear Ms. Spruell:

This opinion of the Attorney General is issued in response to your request.

### QUESTIONS

(1) What fees does Act 2011-613, effective September 1, 2012, assess on defendants who have had

their driver's licenses suspended or revoked pursuant to section 32-5A-191 of the Code of Alabama?

(2) What is the amount of the fee to be imposed pursuant to section 32-5A-191.4(g)(6)?

### FACTS AND ANALYSIS

Act 2011-613 amended section 32-5A-191 of the Code of Alabama, making it a criminal violation to drive under the influence of alcohol or controlled substances, and added section 32-5A-191.4 concerning ignition interlock devices. 2011 Ala. Acts No. 2011-613. Such a device is "a constant monitoring device that prevents a motor vehicle from being started at any time without first determining the equivalent blood alcohol level of the operator through the taking of a breath sample for testing." ALA. CODE § 32-5A-191.4(a) (Supp. 2011).

You question application of two new fees provided for by the act. The first is codified in section 32-5A-191(s), which states that "[a]ny person ordered by the court to have an ignition interlock device installed on a designated vehicle shall pay to the court, during the *first four months his or her license is suspended*, seventy-five dollars (\$75) per month." ALA. CODE § 32-5A-191(s) (Supp. 2011) (emphasis added). Only one of the penalty provisions in section 32-5A-191 for first, second, third, or fourth-time offenders requires that the offender's license be suspended—that for first-time offenders in section 32-5A-191(e). ALA. CODE § 32-5A-191(e) (Supp. 2011). The other provisions require that the license be revoked. ALA. CODE § 32-5A-191(f) to (h) (Supp. 2011).

The second fee is an alternative fee codified in section 32-5A-191.4(g)(6) for offenders without a vehicle or who fail to comply with a device-install court order. ALA. CODE § 32-5A-191.4(6) (Supp. 2011). Section 32-5A-191.4 governs the obtaining of devices. The statute places the responsibility for obtaining and paying for the device on the offender. The offender is required to provide proof of installation to the court within 30 days of the order. ALA. CODE § 32-5A-191.4(g)(1) (Supp. 2011). Proof may be furnished by "a certificate of installation or a copy of the lease agreement in the name of the offender." ALA. CODE § 32-5A-191.4(g)(2) (Supp. 2011).

The devices are regulated by the Alabama Department of Forensic Sciences ("DFS"). ALA. CODE § 32-5A-191.4(c) (Supp. 2011). An ignition interlock device company desiring to install in Alabama must make application to DFS to evaluate its device. ALA. CODE § 32-5A-191.4(e) (Supp. 2011). DFS must maintain and make public a list of approved companies. ALA. CODE § 32-5A-191.4(c) (Supp. 2011).

Section 32-5A-191.4(g)(6) provides as follows:

Any defendant who does not own a vehicle or otherwise have an ignition interlock device installed on the vehicle shall be required to pay ***seventy-five dollars (\$75) per month, the same approximate cost the defendant would have paid to an ignition interlock provider*** if the defendant had an interlock device installed.

ALA. CODE § 32-5A-191.4(g)(6) (Supp. 2011) (emphasis added).

Criminal statutes are to be strictly construed and should not be extended by construction. *Ex parte Evers*, 434 So. 2d 813 (Ala. 1983), *on remand*, *Evers v. State*, 434 So. 2d 817 (Ala. 1983). “““A basic rule of review in criminal cases is that *criminal statutes are to be strictly construed in favor of those persons sought to be subjected to their operation, i.e., defendants.*””” *Holloway v. State*, 995 So. 2d 180, 182 (Ala. Crim. App. 2008), *quoting Cockrell v. State*, 890 So. 2d 174, 180-81 (Ala. 2004). When “faced with two reasonable interpretations of a criminal statute, . . . the doctrine of lenity requires the court to adopt the less punitive alternative.” C. Sands, *Sutherland Statutory Construction*, § 59:4 (7<sup>th</sup> ed. 2011), *citing Rich v. State*, 49 So. 3d 734 (Ala. Crim. App. 2009). “The law of costs and fees is penal and must be strictly construed.” *Chatman v. Pizitz, Inc.*, 429 So. 2d 969, 971 (Ala. 1983).

First, the \$75 fee provided by section 32-5A-191(s) should be paid each month that the payee’s license is suspended. The text of section 32-5A-191(s) limits its application to the suspension of a license. The Legislature could have stated “license is suspended ***or revoked.***” It did not. More problematic is the fact that section 32-5A-191(e) provides for a suspension of only “90 days,” i.e., three months, not four months as referenced in section 32-5A-191(s). ALA. CODE § 32-5A-191(e) (Supp. 2011). Thus, section 32-5A-191(s) is susceptible of two interpretations. It may be read as requiring the fee to be paid for four months, or when read with section 32-5A-191(e), it may require the fee to be paid for three months. Applying the rules of statutory construction, this Office is constrained to conclude that the offender shall pay \$75 per month during the three-month period that the license is suspended.

Second, regarding section 32-5A-191.4(g)(6), the payee should pay \$75 a month until he or she pays the lowest price charged by an approved device company for an ignition interlock device. You correctly point out that this section does not provide for a sum certain. Instead, it states that the offender is to pay \$75 per month based on the ***approximate*** installation cost of the device. The court may contact the approved providers on the list to determine the cost

of installation and order the offender to pay \$75 a month until that amount is paid. This section could be read to require the total fee to be the average price charged by all approved device companies or the lowest price charged by any company. Following the doctrine of lenity, this Office concludes that the fee should be the lowest installation cost charged by any approved company.

CONCLUSION

The fee provided for by section 32-5A-191(s) of the Code of Alabama applies to a DUI offender under court order to install an ignition interlock device whose license is suspended. The fee does not apply to an offender whose license is revoked. The offender shall pay \$75 per month during the three-month period that the license is suspended.

Under section 32-5A-191.4(g)(6), the court must order an offender who does not own a vehicle, or fails to comply with an install order, to pay the lowest cost of installation charged by any ignition interlock device company approved by the Alabama Department of Forensic Sciences, payable in \$75 monthly installments until paid in full.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Ward Beeson of my staff.

Sincerely,

LUTHER STRANGE  
Attorney General  
By:



BRENDA F. SMITH  
Chief, Opinions Division

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