



**STATE OF OKLAHOMA  
BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE**

Dr. Jarrad Wagner, Ph.D.,  
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Chairman

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Joshua Smith  
Director

**NOTICE**

**SPECIAL MEETING AT OKLAHOMA CITY, OKLAHOMA  
Of the Board of Tests for Alcohol and Drug Influence**

Oklahoma Department of Public Safety Complex  
Building No. 9, W.C. (Sarg) Smith Classroom  
3600 N. Martin Luther King Ave. Oklahoma City, OK  
**Tuesday August 20<sup>th</sup>, 2024  
10:00 A.M.**

**Agenda**

1. Call to Order and Roll Call
2. Statement of Compliance with the Open Meetings Act
  - a. Posting at BOT Office and email notices completed August 16, 2024
3. Approval of Minutes
  - a. May 14, 2024 Regular Board Meeting
4. Director's Report
  - Agency activity updates..... (Josh Smith reporting)
  - Intoxilyzer 9000 status update.....(Josh Smith reporting)
5. Discussion and possible action to adopt proposed emergency\* rules to be effective November 1, 2024, in response to HB3000 statutory changes signed into law during the 2024 Legislative Session.

*STATEMENT OF EMERGENCY: \*Pursuant to 75 O.S. § 253; the Board hereby identifies and affirms the following emergency rule amendments are deemed necessary to comply with deadlines in amendments to the agency's governing law and avoid serious prejudice to the public interest and safety.*

- a. 40:50-1-2 - Device certification process [AMENDED]
  - b. 40:50-3-2 – Application – eligibility – enrollment [AMENDED]
  - c. 40:50-3-3 – Program length – program participation criteria – calculation of active days [AMENDED]
  - d. 40:50-3-4 – Medical exemptions – employer exceptions – affordability accommodations [AMENDED]
  - e. 40:50-3-5 – Program completion, violations, and failure criteria for participants enrolled on or after November 1, 2022 [AMENDED]
6. Public Comment(s) *\*pursuant to the Oklahoma Open Meetings Act, no action may be taken on any public comments*
  7. Chairman's Report and Adjournment



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Joshua Smith  
State Director

The agenda for this meeting was posted in accordance with Title 25 Section 311.A.9, at the Administrative Offices of the Board of Tests for Alcohol and Drug Influence, 3600 North Martin Luther King Avenue, Building 9, Oklahoma City, OK, 73111.

**Regular Meeting  
Of the Board of Tests for Alcohol and Drug Influence  
Oklahoma Department of Public Safety Complex,  
W.C. Sarg Smith Classroom  
3600 North Martin Luther King Avenue, Oklahoma City, OK, 73111**

**Tuesday May 14, 2024  
10:00 A.M.**

**MINUTES**

**BOARD MEMBERS PRESENT:**

Dr. Jarrad Wagner, OSU Health Science – Chair  
Chief Michael Bell, Oklahoma Chiefs of Police

Major Nathaniel Mackey, Dept. of Public Safety  
Sheriff Damon Devereaux, Sheriffs and  
Peace Ofc Assoc.

**BOARD MEMBERS NOT PRESENT:**

Dr. LaTrina Frazier, Dept. of Health  
Kevin Kramer, Oklahoma State Bureau of  
Investigation  
Dr. Kenneth Blick, OU Health Science

**STAFF PRESENT:**

Josh Smith, Director  
Jordan Miller, Bus. Services Coord.  
Magan Sloan, Interlock Assistance Rep.  
Christopher Pape, Breath-Test Admin  
David Cravens, Training Admin  
David Barnett, Interlock Admin

**1. Call to Order and Roll Call**

**Action Taken:** Dr. Wagner called the meeting to order at approximately 10:00 a.m. Roll was taken; five members were present.

**2. Statement of Compliance with the Open Meetings Act**

**Action Taken:** Dr. Wagner gave statement of compliance for the record.

**3. Approval of Minutes**

**Action Taken:** Chief Bell motioned to approve the drafted minutes from the Tuesday, February 13, 2024, Regular Board Meeting. Kevin McCullough seconded.

A roll call was taken with the following results: Wagner voted yes, Bell voted yes, McCullough voted yes, Devereaux voted yes, Mackey voted yes.

**4. Director's Report**

*The Director provided the following updates:*

Legislative:

**HB3000** - Bill was signed into law 05/03/2024. Effective 11/01/2024. Creates the Impaired Driving Prevention Advisory Committee; Opens medical exemption qualifications to all tiers of the IDAP program, clearly identifies the Board's authority over interlock providers, technicians, and service centers in response to AG opinion given in 2023 to Board of Education and allows an optional pathway for first time impaired driving offenders. Service Oklahoma has reported that they will be meeting with me soon to discuss the changes and processes moving forward.

Agency:

**IDAP** - The agency has continued to observe quarterly growth of enrollments

January – 133

February – 166

March – 141

April - 186

**Training** - David has completed 24 Intoxilyzer 8000 courses. We are experiencing no shows from enrolled students, David now submits notice to agency leadership for no shows because we have limited seating.

**Maintenance** - We continue to maintain instrumentation the best we can. CMI is still repairing instruments. We have 13 units currently at CMI awaiting repair. Average repair times are between 90 and 120 days.

**Proposed Admin office move** - DPS approached the Director and proposed a new location for the Board to office from. The location proposed remains on campus and includes renovation costs absorbed by DPS. The discussion is ongoing and there are no solidified plans at this time. The Director informed the Board that the proposed location increases our visibility and adds more office space. There are some changes that would need to occur to accommodate the classroom instruction for breath testing operator trainings, but the changes are only logistical.

**5. Updates and discussion with possible action regarding breath alcohol instrumentation state plan.**

**(Note: This plan is fluid and amendable.)**

**BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE "STATE PLAN" TO ADOPT NEW BREATH ALCOHOL TESTING INSTRUMENTATION**

- ~~1. Identify the need for new instrumentation (current situation of the state).~~
- ~~2. Modify the administrative rules to accommodate incorporation of the new instrumentation.~~
- ~~3. Develop and adopt internal Board policy and procedure for instrument evaluation.~~
- ~~4. Solicit feedback from other states currently using candidate instruments.~~
- ~~5. Select instruments to evaluate that meet the statutory requirements, rules, and needs of the State.~~
- ~~6. Evaluate instruments pursuant to the internal Board evaluation policy and procedure.~~
- ~~7. Board selects best candidate/instrument to adopt based on evaluation report/results or best fit.~~
- ~~8. Work with the selected instrument manufacturer to negotiate a purchase and service contract.~~
- ~~9. Identify funding sources and acquisition of new instrumentation.~~
- ~~10. Send qualified staff to manufacturer maintenance and repair training.~~
- ~~11. Develop and identify level of training and curriculum for current operators and new operators.~~
- ~~12. Create roll-out and distribution plan for new instrumentation.~~

Discussion:

The Director informed the Board that staff (Chris, David, and Josh) attended the Intoxilyzer 9000 manufacturer training. The Director informed the Board that hardware is expected to begin arriving in June 2024 and will have a five-year warranty. The staff and CMI, Inc. are working through the software development.

**Action Taken:** No Action taken.

**6. Public Comment(s) *\*pursuant to the Oklahoma Open Meetings Act, no action may be taken on any public comments***

Public comments were heard. Thomas Hosty recommended the Board have the software included in the five-year warranty with the Intoxilyzer 9000. Thomas Hosty recommended that if the Board were to move locations that it would be great to see a

waiting lobby. He shared that Service Oklahoma is failing to serve notice and they are sending late notices.

Brian Morton shared that he takes care of his clients and has no other comments to share.

7. **Possible discussion and vote to enter Executive Session pursuant to 25 O.S. § 307 to discuss employment, demotion, discipline, or performance for the following individual salaried employees of the Board:  
David Barnett, David Cravens, Jordan Miller, Christopher Pape, Magan Sloan, Joshua Smith.**

- **Vote to Enter Executive Session**
- **Vote to Exit Executive Session**

**Action Taken:** Kevin McCullough motioned to enter executive session. Sheriff Devereaux seconded.

A roll call was taken with the following results: Wagner voted yes, Bell voted yes, Devereaux voted yes, McCullough voted yes, Mackey voted yes

**Action Taken:** Sheriff Devereaux motioned to exit executive session. Chief Bell seconded.

A roll call was taken with the following results: Wagner voted yes, Bell voted yes, Devereaux voted yes, McCullough voted yes, Mackey voted yes

8. **Possible discussion and action in response to Executive Session discussions.**

**Action Taken:** Kevin McCullough motioned the Director move forward with the personnel decisions discussed in the executive session. Chief Bell seconded.

A roll call was taken with the following results: Wagner voted yes, Bell voted yes, Devereaux voted yes, McCullough voted yes, Mackey voted yes

10. **Chairman's Report**

Dr. Wagner expressed the Board's continued overall approval and appreciation to the staff members. Dr. Wagner relayed to the staff that he is aware that the agency is not fully operated by the director and that the monthly reports received from the director come as a result of the hard work put in by the staff.

**11. Adjournment**

**Action Taken:** Chief Bell motioned to adjourn. Major Mackey seconded.

A roll call was taken with the following results: Wagner voted yes, Bell voted yes, Devereaux voted yes, McCullough voted yes, Mackey voted yes

Respectfully submitted,

Chairman Dr. Jarrad Wagner  
Board of Tests for Alcohol and Drug Influence

**A digital copy of these minutes is kept on record at the Board of Tests.  
Available upon request.**

**DRAFT**

## CHAPTER 50. IGNITION INTERLOCK

### SUBCHAPTER 1. IGNITION INTERLOCK DEVICES, SERVICE CENTERS, TECHNICIANS

#### 40:50-1-2. Device certification process

- (a) No device may be used in the state of Oklahoma unless it has been approved by the Board in accordance with the requirements stated herein.
- (b) A list of approved device models shall be maintained by the Board and available for public review at the administrative office of the Board during regular business hours or by accessing the Board website at [www.ok.gov/bot](http://www.ok.gov/bot).
- (c) A manufacturer representative seeking certification of a device shall:
- (1) Complete an application for certification of an ignition interlock device and remit the appropriate fee in accordance with procedures established by the Board.
  - (2) Provide proof, as deemed appropriate by the Board, the device for which certification is being sought in Oklahoma meets or exceeds the current National Highway Traffic Safety Administration (NHTSA) specifications (78 FR 26849).
  - (3) Provide a current manufacturer's ISO 9001:2015 certification issued by an accredited registrar within the scope requirements provided by the Board.
  - (4) Provide a certificate of insurance, issued by an insurance company authorized to transact business in Oklahoma, specifying:
    - (A) A product liability policy with a current effective date;
    - (B) The name and model number of the device model covered by the policy;
    - (C) Policy coverage of at least one million dollars (\$1,000,000) per occurrence and three million (\$3,000,000) in the aggregate;
    - (D) The manufacturer as the insured and the state of Oklahoma as an additional insured;
    - (E) Product liability coverage for defects in manufacture, materials, design, calibration, installation, and operation of the device; and
    - (F) The manufacturer will notify the Board immediately upon notice of cancellation of the product liability policy.
  - (5) Provide a schedule of all fees that may be charged to a participant. A participant shall not be imposed or required to pay any unscheduled fee(s). Such submission of schedule of fees shall be on an approved form provided by the Board. Any modification to the schedule of fees shall be submitted to the Board at least thirty (30) days prior to implementation.
  - (6) Devices shall use fuel cell technology for breath alcohol testing and a camera in accordance with the requirements in this Chapter.
  - (7) Agree to ensure any service performed on a device installed pursuant to an Oklahoma Installation Authority shall be in compliance with all requirements in this title.
  - (8) Agree to ensure proper record keeping and provide testimony relating to any aspect of the installation, service, repair, use, removal, interpretation of any report or information recorded in the data storage system of a device or performance of any other duties required by this title at no cost on behalf of the State of Oklahoma or any political subdivision.
  - (9) Shall authorize the Board of Tests to release records viewable by the agency to law enforcement representatives for investigative purposes, such record releases shall be reported on Board letterhead.
  - (10) Advise the Board whether the device for which certification is being sought in Oklahoma is the subject of any action to disallow, or has ever been, in any way, disallowed for use in another state whether such action occurred before or after approval in Oklahoma and if or when such action is or has been appealed in the other state and the outcome of the appeal.
  - (11) Upon request of the Board, for each device submitted for certification or certified under this section, agree to install the device with all proposed anti circumvention features activated in a vehicle provided by the Board. Any service performed pursuant to this section, including but not limited to, installation, maintenance, calibration or removal shall be completed at no cost to the Board.
  - (12) Agree to only distribute Board approved solicitations related to the rules in this Chapter. Such requests for approval shall be submitted with a form provided and approved by the Board prior to distribution.

(13) Agree to strictly comply with the affordability provisions of these rules.

(14) Provide a current copy of the lease agreement or contract for Oklahoma required interlock participants. Amendments to the submitted lease agreement or contract after device certification or recertification shall be submitted to the Board for review prior to implementation.

(d) The Board may conduct compliance testing on the device submitted for certification, at any time.

(e) Certification shall be for only one device model.

(f) Approved devices shall be recognizable, as such, upon visual inspection.

### **SUBCHAPTER 3. IMPAIRED DRIVING ACCOUNTABILITY PROGRAM (BOT IDAP)**

#### **40:50-3-2. Application - eligibility - enrollment**

(a) A person seeking enrollment into BOT IDAP shall apply on a form approved by the Director and at such time of application shall simultaneously also submit a copy of the Service Oklahoma Order of Revocation at the time of application or a copy of the Oklahoma Impaired Driving Affidavit pertaining to the person's arrest. Applicants whose driving privileges are otherwise ineligible shall not be enrolled in BOT IDAP and shall be directed to consult his/her driver licensing authority for assistance. Enrollment into BOT IDAP does not grant driving privileges and shall not be construed to authorize the person to drive unless the person is otherwise eligible to drive. Any person subject to driver license revocation for an impaired driving arrest occurring on or after November 1, 2022 may enroll pursuant to this section, if eligible. BOT IDAP is available ~~to~~ for Class D licenses driving privileges only.

(b) Fully enrolling in BOT IDAP consists of:

(1) Payment of the program fee to the Board; and

(2) Presentation or reporting\* (using the online enrollment portal) of an Ignition Interlock Installation ~~Verification Form~~ reflecting an Oklahoma approved device with camera is currently installed on the vehicle the participant will operate; and

(3) Presentation of the signed "BOT IDAP Participant's Agreement"; or acknowledgment and agreement using the online enrollment portal. and

~~(4) The Participant shall be responsible for reporting the required program length to the Board.~~

(c) The commencement date of the participant's program shall be the day all of the following conditions are satisfied:

(1) The Board receives all documents and fees meeting BOT IDAP enrollment criteria; and

(2) No earlier than the ~~effective revocation date pursuant to the Notice and Order of Revocation/Disqualification issued by the state driver licensing authority~~ date of interlock installation and arrest date for the offense requiring completion of BOT IDAP. Prior interlock program days shall not be credited toward a subsequent program period.

(d) Multiple program periods shall run consecutively.

(e) Participants may enroll in more than one (1) BOT IDAP. A participant must complete the program in which they are currently enrolled before commencing any subsequent program period. In no instance will a participant's credit for time in one (1) BOT IDAP be credited toward any other BOT IDAP.

(f) The BOT IDAP participant agreement shall be signed or acknowledged using the online enrollment portal by the participant and shall include the following information:

(1) The participant's first and last name; and

(2) Participant's driver license number; and

(3) Participant's program length requirement ~~as reflected on the Service Oklahoma Order of Revocation/Disqualification~~; and

(4) The list of Ignition Interlock violations and criteria for program completion or failure as defined by the Board; and

(5) An explanation of the consequences of violations of the Ignition Interlock program; and

(6) The date upon which the BOT IDAP Participant Agreement was signed; and

(7) Participant's signature or online enrollment portal acknowledgment.

(g) A confirmation of enrollment form approved by the Director shall be delivered to the participant via his/her preferred contact method upon fully enrolling. It is the participant's responsibility to provide his/her preferred contact method.



#### **40:50-3-3. Program length - program participation criteria - calculation of active days**

(a) **BOT IDAP program lengths.** Program lengths shall be no less than the revocation durations set forth in 47 O.S. §6-205.1 or the required revocation period as reflected on the Notice and Order of Revocation/Disqualification issued by the state driver licensing authority or Final Order of the court. The program length shall also be subject to the statutory completion requirements pursuant to 47 O.S. §6-212.5. The program length shall also be subject to OAC 40:50-3-5 completion requirements. BOT IDAP lengths pursuant to 47 O.S. §§6-205.1; 6-212.5 shall be:

(1) No less than One Hundred Eighty (180) active interlock days for a first license revocation as shown by the records of the state driver licensing authority.

(2) No less than Three Hundred Sixty Five (365) active interlock days for a second license revocation occurring within ten (10) years preceding the date of arrest as shown by the records the state driver licensing authority.

(3) No less than Seven Hundred Thirty (730) active interlock days for a third or subsequent license revocation occurring within ten (10) years preceding the date of arrest as shown by the records of the state driver licensing authority.

(b) **Program participation criteria.** BOT IDAP participants shall not receive credit toward his/her program length for any thirty (30) calendar day cycle the participant fails to meet the program participation criteria as defined in this subchapter. A compliance download service as defined in 40:50-3-1.1 may be needed to fulfill these criteria.

(c) **Calculation of active ignition interlock days.** All BOT IDAP participants shall meet a cumulative number of active ignition interlock days exceeding or equal to the program length required. A compliance download service as defined in 40:50-3-1.1 may be needed to establish satisfaction of these criteria.

(d) The Director shall prescribe internal program review policies and procedures for all authorized Board personnel reviewing completion criteria.

#### **40:50-3-4. Medical exemptions - employer exceptions - affordability accommodations**

(a) **Medical exemptions.**

~~(1) only persons qualifying pursuant to 47 O.S. § 6-205 may seek a medical exemption and does not grant the individual driving privileges. Such individuals seeking medical exemption shall:~~

~~(A) submit a pulmonologist's certification indicating the person has a documented medical condition preventing the person from providing a breath sample of at least one and two-tenths (1.2) liters; and~~

~~(B) enroll in BOT IDAP with the exception of an Installation Verification Form; and Board staff shall respond to a request on a form approved by the Director granting or denying the medical exemption. The individual granted a medical exemption is responsible for delivering the document to the state driver licensing authority.~~

~~(C) not operate, drive, or be in actual physical control of a motor vehicle; and~~

~~(D) complete the required program length.~~

(2) Participants denied medical exemption may appeal the denial in accordance with 40:50-3-6.

(b) **Employer vehicle exceptions.**

(1) only persons subject to a first license revocation pursuant to 47 O.S. § 6-205 are eligible for employer exceptions.

(A) BOT IDAP participants must have a device installed upon any vehicle they may operate that is owned or leased, as reflected on the vehicle registration, by an employer of the person for use by the person, except when the employer requests the ignition interlock device not be installed. Rental vehicles do not qualify for employer exception.

(B) Such request shall be in writing and notarized on the official letterhead of the employer with a copy of the vehicle registration and submitted by the employer to the Board; provided, a request shall not be accepted by the Board under the following circumstances:

(i) When the person is self-employed or owns part or all of the company or corporation, or exercises control over some part of the business which owns or leases the vehicle; or

(ii) When the person is employed by a relative who is within the first degree of consanguinity or who resides in the same household.

(2) Participants granted an employer exception are not relieved of the requirement to install an ignition interlock device on a vehicle as reflected on an Installation Verification Form. Such authorization for exception shall only apply to BOT IDAP participants operating employer vehicles under the course and scope of employment. IDAP participants shall keep the approved exception on his or her person while operating the employer vehicle. It is the Participant's responsibility to obtain an additional restriction from the state driver licensing authority.

(3) Participants denied an employer exception may appeal the denial in accordance with 40:50-3-6.

**(c) Affordability accommodations.**

(1) Participants applying for affordability status for the purpose of the ignition interlock program shall be deemed to qualify for such status by showing valid proof that the person applying for accommodations is actively receiving benefits from one of the following state or federal public assistance programs listed below:

(A) Temporary Assistance for Needy Families (TANF)

(B) Supplemental Nutritional Assistance Program (SNAP)

(2) Participants meeting affordability requirements shall receive the following credit that shall be distributed into the participants account by the manufacturer not to exceed a frequency of \$25.00 per thirty (30) days.

(A) \$150.00 maximum credit for a first license revocation pursuant to 47 O.S. § 6-205.1(A)(1); or

(B) \$300.00 maximum credit for a second license revocation pursuant to 47 O.S. § 6-205.1(A)(2); or

(C) \$450.00 maximum credit for a third or subsequent license revocation pursuant to 47 O.S. § 6-205.1(A)(3).

(3) A participant that does not remain compliant with respect to the BOT IDAP program or device lease fees forgoes his/her affordability eligibility. The manufacturer may inquire with the Board whether the person still meets the affordability accommodations and qualifies for the credit.

(4) The participant shall provide the required documentation to the Board. Upon approval, the Board shall notify the manufacturer by providing notice to the designated manufacturer representative. No manufacturer is required to provide affordability accommodations to more than 10% of its active participants in the State of Oklahoma.

(5) The Board shall provide information on the agency website informing interlock customers about the affordability program and how a participant can qualify.

(6) Manufacturers shall not count coupons, rebates, refunds, discounts, or other financial inducements otherwise available to any customer as the credit required by these rules.

(7) Participants denied affordability accommodations may appeal the denial in accordance with 40:50-3-6.

**40:50-3-5. Program completion, violations, and failure criteria for participants enrolled on or after November 1, 2022**

(a) A BOT IDAP Certificate of Completion shall be issued to participants meeting the following criteria:

(1) The participant has met the active ignition interlock day requirements pursuant to O.A.C. 40:50-3-3; and

(2) The participant has met the participation requirements pursuant to O.A.C. 40:50-3.3; and

(3) The last ninety (90) active ignition interlock days must be free of program and reportable violations found in 40:50-1-3.2 pursuant to 47 O.S. §6-212.5 A(4) for license revocations pursuant to 47 O.S. § 6-205.1. For purposes of retest violations, ~~three~~ ~~six~~ ~~(36)~~ or more retest violations occurring during the last ninety (90) active ignition interlock days shall constitute a reportable violation.

(b) Upon reaching the tentative completion date provided to the participant in the confirmation of enrollment form, a participant is eligible to submit a request for an IDAP Certificate of Completion. A denial of IDAP Certificate of Completion notice shall be issued to participants whose requests do not meet criteria as defined in 40:50-3-5. Such notice shall contain the finding that caused the denial and a notice of right to appeal and shall be delivered to the participant via his/her preferred contact method. It is the participant's responsibility to provide his/her preferred contact method.

(c) Miscellaneous Program violations: An additional arrest for DUI/APC prior to completion of the Participant's BOT IDAP, at the date of discovery by the Board, shall be treated as a violation and shall

have the same weight as reportable violations found in 40:50-1-3.2 when evaluating the requirements for an IDAP Certificate of Completion.

(d) Program failure: Participants that are deemed to have failed the program or voluntarily discontinue participation in the program shall receive no credit for time served beginning from enrollment. Interlock days served prior to the program failure date are invalid for credit towards re-enrollment. Participants that fail the program or choose to discontinue participating in the program are authorized to re-enroll in BOT IDAP. The following actions will result in program failure:

(1) removal of the device from the Program Vehicle and failure to reinstall a device in a substitute Program Vehicle within sixty (60) days; or

(2) ~~medical exemption participants reported or found to be operating a motor vehicle during his/her required program length.~~ participants reported to be operating a vehicle not equipped with an ignition interlock device by law enforcement after the Board has issued documented warning to the participant that they are unauthorized to do so. Failure to have received the documented warning shall not be a valid argument of defense for administrative appeals pursuant to 40:50-3-6.