

**Model Driving While Under  
the Influence of Alcohol and  
Other Drugs Act**

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# Model Driving While Under the Influence of Alcohol and Other Drugs Act

## Policy Statement

Alcohol and other drug use significantly contribute to this country's annual highway death toll. Traffic accidents are the leading cause of death for individuals between 6 and 33 years of age. Fifty-six percent (56%) of those fatalities involve alcohol and/or other drugs. Ten to twenty percent (10%-20%) of all fatally injured drivers have drugs, often in combination with alcohol, in their bloodstream. In 1992, alcohol-related crashes resulted in approximately 20,000 deaths. The rate of alcohol involvement among drivers under age 21 is approximately twice that of older drivers. Twenty percent (20%) of 15 to 20 year old drivers involved in fatal crashes in 1991 were intoxicated.

To reduce these alcohol or other drug-related traffic deaths, several states have adopted strict laws to deter drinking and driving. California, Maine, Oregon, Utah, and Vermont prohibit a person from operating a motor vehicle with a blood or breath alcohol concentration (BAC) of .08% or more. Research shows that the overwhelming majority of drivers have impaired driving skills at this BAC level. In fact, over 80% of drivers involved in fatal crashes with positive BACs exceeded the .08% level. Studies suggest that reduction of the legal BAC limit from .10% to .08% has notable deterrent effect. A survey of California drivers 15 months after passage of the state's .08% law found that 50% of survey respondents were less likely to drive after drinking alcohol as a result of the lowered limit.

For drivers under age 21, some states have adopted zero tolerance laws. These laws typically prohibit individuals under 21 years of age from driving with a BAC of .02% or more. A National Highway Traffic Safety Administration (NHTSA) review of Maryland's .02% law reveals a significant decrease in the number of under age 21 drivers involved in accidents who had been drinking. A study of Maine's .02% law based on self-reported behavior indicates that persons under age 21 drive less often after drinking and experience fewer crashes.

Driver's license revocation or suspension effectively reduces highway accidents and prevents recurrence of alcohol-related driving offenses. Thirty-one states and the District of Columbia revoke licenses administratively. Minnesota, New Mexico, Nevada, North Carolina, Oklahoma, Oregon, West Virginia, and Wisconsin have noted substantial reductions in alcohol-related fatal crashes following application of administrative revocation procedures.

The Model Act follows the lead of states dedicated to decreasing alcohol or drug-related highway fatalities. It incorporates a per se illegal BAC limit of .08% for adults; makes it per se illegal for persons under age 21 to operate a motor vehicle with an alcohol concentration of any measurable or detectable amount (.02% or more); and authorizes administrative revocation of licenses for refusal to take a chemical test or for a chemical test failure. While permitting swift revocation, the administrative procedures protect an offender's due process rights through an appeals and judicial review process.

The research information in this statement was provided by the National Highway Traffic Safety Administration.

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# Highlights of the Model Driving While Under the Influence of Alcohol and Other Drugs Act

- Makes it a per se criminal offense for a person to operate a motor vehicle with an alcohol concentration of .08% or above.
- Makes it a per se criminal offense for a person under age 21 to operate a motor vehicle with an alcohol concentration of any measurable or detectable amount.
- Makes it a per se criminal offense to operate a motor vehicle with the presence of a controlled substance in the person's blood.

## DEFINITIONS

- Defines alcohol concentration for breath or blood specimens.
- Defines a drug broadly to include any substance which can affect a person's ability to operate a motor vehicle.
- Defines a conviction to include any adjudication of guilt, regardless whether the sentence has been suspended.

## ADMINISTRATIVE LICENSE REVOCATION

- Makes the refusal to take a chemical test or a chemical test failure grounds for immediate revocation of the driver's license.
- Provides for the immediate taking of the license; issuance of a temporary license; and serving of notice of the revocation by the arresting officer at the time of the arrest.
- Protects the offender's due process rights by providing for an administrative appeals hearing and judicial review according to the uniform administrative procedures act.
- Maintains the distinction between the administrative proceedings and the criminal proceedings so that the outcome of either will not affect the other procedure.
- Provides for revocation periods rather than restricted driving privileges.



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# Model Driving While Under the Influence of Alcohol and Other Drugs Act

## **Section 1. Short Title.**

This [Act] shall be known and may be cited as the “Model Driving While Under the Influence of Alcohol and Other Drugs Act.”

## **Section 2. Legislative Findings.**

- (a) Alcohol use continues to be America’s number one highway safety problem. In 46 percent of all fatal crashes in 1992, either a driver or a pedestrian had been drinking. This figure was 57 percent in 1982.
- (b) Nearly 20,000 people were killed in alcohol-related crashes in 1992. In addition, several studies have found other drugs that can impair driving performance in the bloodstream of 10 to 22 percent of all fatally injured drivers, often in combination with alcohol.
- (c) Reduced blood alcohol concentration (BAC) limits (.08% for adult drivers and lower for drivers under the age of 21) are supported by research. Deterrence begins with laws that define and prohibit impaired driving, and permit a broad range of administrative and judicial sanctions.
- (d) Administrative license revocation has proven to be the single most effective method to deter impaired driving.

## **Section 3. Purposes.**

- (a) The purposes of this [Act] are: (1) to provide safety for all persons using the streets or other roadways of this state by quickly revoking the driving privileges of those persons who have shown themselves to be safety hazards by driving with an excessive concentration of alcohol in their bodies; and (2) to ensure drivers in need of drug education or treatment are identified and provided the appropriate assistance.

### COMMENT

**Legislative findings are useful in providing guidance to interpreting courts and publicizing and memorializing the goals and objectives of the [Act]. *Block v. Hirsch*,**

**256 U.S. 135, 154 (1921) (“entitled at least to great respect”).**

## **Section 4. Definitions.**

The following words and phrases when used in this [Act] shall have the following meanings:

- (a) “Alcohol Concentration” means either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.
- (b) “Conviction” means that a court of original jurisdiction has made an adjudication of guilt. An unvacated forfeiture of bail or collateral deposit to secure a defendant’s appearance in court, a plea of nolo contendere accepted by the court, the payment of a fine or court costs, a plea of guilty, or a finding of guilt on a traffic violation charge shall be the equivalent to a conviction, regardless of whether the penalty is rebated, suspended, or probated. For purposes of this [Act] only, an authorized administrative tribunal shall constitute a court.
- (c) “Department” means the [state department of motor vehicles.]
- (d) “Drive” means to operate or be in actual physical control of a vehicle.
- (e) “Driver’s license” means any license to operate a motor vehicle issued under the laws of the state.
- (f) “Drug” means any chemical substance, natural or synthetic which, when taken into the human body, can impair the ability of the person to operate a motor vehicle safely.
- (g) “License” means any driver’s license or any other license or permit to operate a motor vehicle issued under, or granted by, the laws of this state, including:
  - (1) Any temporary license or instruction permit;
  - (2) The privilege of any person to drive a motor vehicle whether or not the person holds a valid license;

(3) Any nonresident's operating privilege as defined in subsection (h).

(h) "Nonresident's operating privilege" means the privilege conferred upon a nonresident by the laws of this state pertaining to the operation by that person of a motor vehicle, or the use of a vehicle owned by that person, in this state.

(i) "Revocation" means the termination by formal action of the [department] of a person's license or privilege to operate a motor vehicle on the highways, which terminated license or privilege shall not be subject to renewal or restoration except that an application for a new license may be presented and acted upon by the [department] after the expiration of the applicable period of time prescribed in this [Act].

(j) "State" means a state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a province of Canada.

(k) "Suspension" means the temporary withdrawal by formal action of the [department] of a person's license or privilege to operate a motor vehicle on the highways, which temporary withdrawal shall be for a period specifically designated by the [department].

COMMENT

**General.** The definitions in this section are based on the driver licensing definitions in the Uniform Vehicle Code (UVC). They are basic terms which are already defined in the driver licensing laws of many states. They should be a part of the legal context into which the law fits. If they are not part of the overall driver licensing law, they should be specifically adopted as part of this [Act].

**Drug Definition.** This definition is taken from the California Vehicle Code and is expanded beyond the definition used in controlled substances acts to include substances causing impairment and creating dangerous drivers.

**Section 5. Revoking or Suspending Resident's License Based Upon Conduct in Another State.**

(a) The [department] shall revoke the license of any resident of this state, and may suspend or revoke a nonresident's license, upon receiving notice of such person's conviction in another state of an offense described in [Section 7 of this Act].

(b) The [department] is authorized to suspend or revoke the license of any resident or nonresident upon

receiving notice of the conviction of such person in another state of an offense, other than those described in [Section 7 of this Act], which if committed in this state, would be grounds for suspension or revocation of the license of a driver.

(c) The [department] may give such effect to conduct of a resident in another state as is provided by the laws of this state had such conduct occurred in this state.

COMMENT

**This section is taken from UVC Section 6-203 (1992) and it ensures that offenders will not escape the administrative sanctions of the criminal offense by crossing state lines to obtain new licenses. By informing other states of the action taken against the driver, it will also alert the other states to the driver's record and potential safety risk. This section also provides for uniformity of license action in all the states.**

**Section 6. When Court to Forward License to Department and Report Convictions.**

(a) The court in which a person is convicted of any offense for which this [Act] requires revocation of the person's license by the [department], shall require the surrender to the court of any driver's license then held by the convicted person. The court shall thereupon forward the license together with a record of such conviction to the [department].

(b) Every court having jurisdiction over offenses committed under this [Act], or any other law of this state or municipal ordinance adopted by a local authority regulating the operation of motor vehicles on streets or other roadways, shall forward to the [department] within [10 days] a record of the conviction of any person in said court for a violation of any said laws other than regulations governing standing or parking, and may recommend the suspension of the driver's license of the person so convicted. The court shall also report to the department any conviction of a person for any violation of a person's written promise to appear given to an officer upon issuance of a traffic citation, and any failure to appear in court at the time specified by the court.

COMMENT

**This section is taken from UVC Section 6-205 (1992). It ensures that the judicial and administrative sanctions will go hand in hand. This section provides part of the linkage between the two systems so that they will work**

together and punishment will be swift, certain, and more effective.

### ***Section 7. Mandatory Revocation of License by Department.***

The [department] shall forthwith revoke the license of any driver upon receiving a record of the driver's conviction of any of the following offenses:

- (a) Homicide by vehicle (or manslaughter resulting from the operation of a motor vehicle);
- (b) Driving a motor vehicle while under the influence of alcohol or other drugs as prohibited by Section 19 of this [Act];
- (c) Any felony in the commission of which a motor vehicle is used;
- (d) Failure to stop, render aid, or identify the driver in the event of a motor vehicle accident resulting in the death or personal injury of another;
- (e) Perjury or the making of a false affidavit or statement under oath to the [department] under this [Act] or under any other law relating to the ownership or operation of motor vehicles;
- (f) Unauthorized use of a motor vehicle belonging to another which act does not amount to a felony;
- (g) The unlawful use of a license as prohibited by the fraudulent use of identification provision in the [Model Underage Alcohol Consumption Reduction Act].

#### COMMENT

**This section is taken from the UVC Section 6-206 (1992). It complements the license revocations found in the Commission's [Model Underage Alcohol Consumption Reduction Act.] It also provides the coverage for offenses involving motor vehicles. Most states currently provide for these revocations and for the reporting of such convictions to other states for license action when appropriate.**

### ***Section 8. Revocation of License for Refusal to Submit to Chemical Test or Having a BAC of .08% or More.***

- (a) Any person who drives upon the streets or other roadways of this state shall be deemed to have given consent, subject to the provisions of Section 20 of this [Act], to a test or tests of the person's blood, breath, or

urine for the purpose of determining the person's alcohol concentration or the presence of other drugs. The test or tests shall be administered at the direction of a law enforcement officer who has probable cause to believe the person has violated Section 19 of this [Act], and one of the following conditions exists:

- (1) The person has been arrested for a violation of Section 19 or any other offense alleged to have been committed while the person was violating Section 19;
- (2) The person has been involved in an accident;
- (3) The person has refused to submit to the preliminary screening test authorized by Section 10 of this [Act]; or
- (4) The person has submitted to the preliminary screening test authorized by Section 10 of this [Act], which disclosed an alcohol concentration of .08% or more.

The law enforcement agency by which such officer is employed shall designate which of the aforesaid tests shall be administered.

- (b) Any person who is dead, unconscious or otherwise in a condition rendering the person incapable of refusal, shall be deemed not to have withdrawn the consent provided by paragraph (a) of this section, and the test or tests may be administered, subject to the provisions of Section 20 of this [Act].

- (c) A person requested to submit to a test as provided above shall be warned by the law enforcement officer requesting the test that a refusal to submit to the test will result in revocation of the person's license to operate a motor vehicle for [six months, one year, or other appropriate time]. Following this warning, if a person under arrest refuses upon the request of a law enforcement officer to submit to a test designated by the law enforcement agency as provided in paragraph (a) of this section, none shall be given.

- (d) If the person refuses testing or submits to a test which discloses an alcohol concentration of .08% or more under this section, the law enforcement officer shall submit a sworn report to the [department], certifying that the test was requested pursuant to subsection (a) and that the person refused to submit to testing or submitted to a test which disclosed an alcohol concentration of .08% or more.

- (e) Upon receipt of the sworn report of a law enforcement officer submitted under subsection (d), the

[department] shall revoke the driver's license of the person for the periods specified in Section 13.

(f) On behalf of the [department], the law enforcement officer submitting the sworn report under subsection (d) shall serve immediate notice of the revocation on the person, and the revocation shall be effective [7, 10, 15, or other appropriate number] days after the date of service. If the person has a valid license, the officer shall take the driver's license of the person, and issue a temporary license valid for the notice period. The officer shall send the license to the [department] along with the sworn report under subsection (d).

In cases where no notice has been served by the law enforcement officer, the [department] shall give notice as provided in [the state statute governing notice of license action to be given to the licensee] and the revocation shall be effective [7, 10, 15, or other appropriate number] days after the date of service. If the address shown in the law enforcement officer's report differs from that shown on the [department] records, the notice shall be mailed to both addresses.

#### COMMENT

**General.** This section is taken from the UVC Section 6-207 (1992). It provides the basis for administrative action. Instead of waiting for the criminal adjudication process to be completed, the [department] makes its own independent determination of the same fact and revokes if it appears warranted.

The model law provides for revocation rather than suspension because at the conclusion of the sanction period, the license is not automatically returned. Instead, the person may apply for a new license. Whenever a license is withdrawn due to an offense relating to the use of alcohol or other drugs, it is important that the [department] determine that it will be reasonably safe to allow the person to drive before it issues a new license. One of the ways a [department] can make that determination is to look to the person's successful completion of assessment and treatment as indicated for the criminal offense. See Section 21.

**Subsection (d).** In most states, the [department] receives records of convictions and implied consent refusals. The [department] would be unaware of most impaired driving enforcement contacts until a conviction is reported. This section provides the mechanism for immediately providing information concerning all arrests for driving with an unlawful alcohol concentration to the [department].

**In developing the forms and regulations required by this section, the [department] should consider encouraging the utilization of copies of documents which must be prepared by the enforcement officer for other purposes, whenever feasible.**

### ***Section 9. Revocation of License for Refusal to Submit to Chemical Test or Having a BAC of any Measurable and Detectable Amount for Person Under Age 21.***

(a) The phrase "any measurable and detectable amount of alcohol" shall be defined as the alcohol concentration in a person's blood or breath which is .02% or more based on the definition of "alcohol concentration" as defined in Section 4 of this [Act].

(b) Any person under age 21 who drives upon the streets or other roadways of this state shall be deemed to have given consent, subject to the provisions of Section 20, to a test or tests of the person's blood, breath or urine for the purpose of determining such person's alcohol concentration or the presence of other drugs. The test or tests shall be administered at the direction of a law enforcement officer who has probable cause to believe the person has violated Section 19, and one of the following conditions exists:

- (1) The person under age 21 has been arrested for a violation of Section 19 or any other offense alleged to have been committed while the person was violating Section 19;
- (2) The person under age 21 has been involved in an accident;
- (3) The person under age 21 has refused to submit to the preliminary screening test authorized by Section 10; or
- (4) The person under age 21 has submitted to the preliminary screening test authorized by Section 10, which disclosed an alcohol concentration of any measurable and detectable amount.

The law enforcement agency by which such officer is employed shall designate which of the aforesaid tests shall be administered.

(c) Any person under age 21 who is dead, unconscious or who is otherwise in a condition rendering the person incapable of refusal, shall be deemed not to have withdrawn the consent provided by paragraph (b) of this section and the test or tests may be administered, subject to the provisions of Section 20.

(d) A person under age 21 requested to submit to a test as provided above shall be warned by the law enforcement officer requesting the test that a refusal to submit to the test will result in revocation of the person's license to operate a motor vehicle for [six months, one year, or other appropriate time]. Following this warning, if a person under arrest refuses upon the request of a law enforcement officer to submit to a test designated by the law enforcement agency as provided in paragraph (b) of this section, none shall be given.

(e) If the person under age 21 refuses testing or submits to a test which discloses an alcohol concentration of any measurable and detectable amount under this section, the law enforcement officer shall submit a sworn report to the department, certifying that the test was requested pursuant to subsection (b) and that the person refused to submit to testing or submitted to a test which disclosed an alcohol concentration of any measurable and detectable amount.

(f) Upon receipt of the sworn report of a law enforcement officer submitted under subsection (e), the [department] shall revoke the driver's license of the person for the periods specified in Section 13.

(g) On behalf of the [department], the law enforcement officer submitting the sworn report under subsection (e) shall serve immediate notice of the revocation on the person, and the revocation shall be effective [7, 10, 15, or other appropriate number] days after the date of service. If the person has a valid license, the officer shall take the driver's license of the person, and issue a temporary license valid for the notice period. The officer shall send the license to the [department] along with the sworn report under subsection (e).

(h) In cases where no notice has been served by the law enforcement officer, the [department] shall give notice as provided in [the state statute governing notice of license action to be given to the driver's license holder] and the revocation shall be effective [7, 10, 15, or other appropriate number] days after the date of service. If the address shown in the law enforcement officer's report differs from that shown on the [department] records, the notice shall be mailed to both addresses.

COMMENT

**General.** This section is taken from the UVC Section 6-208 (1992). Young persons aged 15 to 20 are killed in alcohol-related crashes at a significantly higher rate than adults, based on miles driven, licensed drivers, or total

population. One reason is that the relative risk of a fatal crash increases much more rapidly at low blood alcohol levels for young drivers than for adults. In 1991, over 1,400 young drivers (ages 15 to 20) killed in traffic crashes nationally had alcohol in their systems. Over one-quarter of these drivers had blood alcohol levels less than .10 percent. In the same year, over 3,100 young people died in alcohol-related crashes.

Zero tolerance laws complement existing minimum drinking age laws. Since it already is illegal for persons under 21 to purchase or possess alcohol in public, it also should be illegal for them to drive with any alcohol in their systems. Zero tolerance laws send a strong message to underage drivers not to drive after drinking any alcohol at all.

It is recommended that the BAC limit be .02% or less and that it apply to all drivers under the age of 21, to be consistent with the legal age for purchasing alcohol. It is recommended that immediate driver's license revocation be invoked for persons who violate the law.

See also the Comments of Section 8.

**Section 10. Preliminary Breath Test.**

When a law enforcement officer has articulable grounds to suspect that a person may have violated Section 19, the officer may request the person to submit to a preliminary screening test of the person's breath to determine such person's alcohol concentration using a device approved by the [state department of health or other appropriate state agency] for that purpose. In addition to this test, or upon a refusal to submit to testing, the officer may require further testing under Section 8 or Section 9.

COMMENT

**This section is taken from the UVC Section 6-209 (1992). Preliminary screening tests provide assistance to the law enforcement officer who suspects impairment due to alcohol. A test result indicating no or a low alcohol level provides grounds for investigating the use of drugs other than alcohol.**

**Section 11. Chemical Test of Drivers in Serious Personal Injury or Fatal Crashes.**

Notwithstanding the provisions of Section 7 and Section 8, when the driver of a vehicle is involved in an accident resulting in death or serious personal injury of another person, and there is reason to believe that the driver is

guilty of a violation of Section 19, the driver may be compelled by a police officer to submit to a test or tests of the driver's blood, breath, or urine to determine the alcohol concentration or the presence of other drugs.

## COMMENT

**This section is taken from the UVC Section 6-210 (1992). Nearly all states have laws allowing the taking of a chemical test due to the exigent circumstances of an accident involving death or injury.**

***Section 12. Opportunity for Hearing Required.***

(a) A revocation of a license under Section 8 or Section 9 shall become effective [7, 10, 15, or other appropriate number] days after the date of service of the notice of revocation.

(1) At any time prior to the hearing provided in subsection (a)(2), the person may request in writing an administrative review of the order of revocation. Upon receiving the request the [department] shall review the order, the evidence upon which it is based, including whether the person was driving or in actual physical control of a motor vehicle, and any other material information brought to the attention of the [department], and determine whether sufficient cause exists to sustain the order. Within 15 days of receiving the request, the [department] shall report in writing the results of the review. The availability of the administrative review of the order shall have no effect upon the availability of judicial review as provided in Section 17 of this [Act].

(2) Any person whose license is revoked under Section 8 or Section 9 may request a hearing in writing. The request shall state the grounds upon which the person seeks to have the revocation rescinded. The request for hearing shall not stay the revocation. The hearing shall be held, within 20 days after receiving the request, in the county in which the alleged offense occurred unless the person and the [department] agree to a different location. The hearing shall be recorded, and be conducted by the [department's] designated agent. The hearing may be conducted upon a review of the law enforcement officer's own reports; provided, however, that the person may subpoena the officer. Upon request, the [department] shall issue subpoenas to compel the attendance of witnesses.

(b) The scope of the hearing shall be limited to the issues of:

(1) Whether the law enforcement officer requested the test pursuant to Section 8 or Section 9;

(2) Whether the person was warned as required by Section 8 or Section 9;

(3) Whether the person was driving a motor vehicle;

(4) Whether the person refused to submit to the testing as provided in Section 8 or Section 9; and

(5) Whether a properly administered test or tests disclosed an alcohol concentration of .08% or more, or any measurable or detectable amount of alcohol for a person under age 21.

## COMMENT

**General.** This section is taken from the UVC Section 6-212 (1992). It provides for a two-step administrative review and hearing process.

**Paragraph (a)(1).** The administrative review in this section is not a hearing. Rather, it is a review by the [department] of papers submitted by the officer and the offender. It affords the offender a limited opportunity to state the offender's side of the story, and to call attention to any obvious errors in the [department's] determination of facts. If promptly requested, this review can be provided before the effective date of the revocation. The purpose of the review is to provide sufficient due process to prevent clearly erroneous license deprivations which could cause irreparable injury to the licensee.

**Paragraph (a)(2).** This section contains substantive and procedural provisions relating to the hearing. This law does not permit a stay of the revocation. Experience has indicated that many drivers request hearings for the purpose of obtaining a stay of revocation if it is afforded. States which allow a stay of revocation pending the hearing, actually encourage more requests for hearings because of the advantage to the offender to take advantage of the "technicalities." The result is the obstruction of one of the most basic goals of administrative revocation - revoking the license and removing the driver from the highways quickly.

**Section 13. Period of Revocation.**

(a) Unless the revocation was for a cause which has been removed, any person whose license or privilege to drive a motor vehicle on the public highways has been revoked shall not be eligible to apply for a new license nor restoration of such person's nonresident operating privilege until the expiration of:

(1) [six months, one year, or other appropriate time] from the date on which the revoked license was surrendered to and received by the [department] or from such other date as shall be determined by the [department] in cases of revocation for refusal to submit to a chemical test under the provisions of Section 8 or Section 9.

(2) [three months, six months, or other appropriate time] from the date on which the revoked license was surrendered to and received by the [department] or from such other date as shall be determined by the [department] in cases of revocation for submitting to a test disclosing an alcohol concentration of 0.08% or more under the provisions of Section 8, or 0.02% or more under the provisions of Section 9.

(3) one year from the date on which the license was surrendered to a court under the provisions of Section 6.

(4) One year from the date on which the revoked license was surrendered to and received by the department under the provisions of Section 7; or

(5) in all other revocation cases, one year commencing on a date determined by the [department].

(b) Following a license revocation under Section 7(b) or 8 and 9, the [department] shall not issue a new license or otherwise restore the driving privilege unless and until the person presents evidence satisfactory to the [department] that it will be reasonably safe to permit the person to drive a motor vehicle upon the streets or other roadways. No driving privilege may be restored until all applicable reinstatement fees have been paid.

(c) Except for revocations under Sections 7, 8 and 9, the [department] shall not issue a new license nor restore a person's revoked nonresident operating privilege unless and until it is satisfied after investigation of the character, habits and driving ability of such person that it will be safe to grant the privilege of driving a motor vehicle on the streets or other roadways.

(d) Where a license or driving privilege has been revoked under Section 8 or Section 9 and the person is also convicted on criminal charges arising out of the same event for a violation of an offense under Section 19, and a revocation has been imposed under Section 7, both revocations shall be imposed but the total period of revocation shall not exceed the longer of the two revocation periods.

## COMMENT

**This section is taken from UVC Section 6-214 (1992).**

**Subsection (a).** It is the intent of these provisions to establish a longer period of license revocation for a person who refuses a chemical test than for a person who takes the chemical test, even if the person's alcohol or other drug level in the person's breath or blood is over the limit. The subsection intends to encourage suspected impaired drivers to take the chemical test so that a precise determination of alcohol or other drug level can be made.

**Subsection (d).** This subsection addresses the relationship between the administrative revocation and the conviction revocation based on the same offense. It specifies that both of the revocation periods are to be imposed, but that they run concurrently, and the total period of revocation imposed is equivalent to the longer of the two periods.

**Section 14. Limited License.**

Notwithstanding the provisions of Sections 13 and 18, following a license revocation under Sections 7, 8 or 9 the [department] may issue after 30 days a limited license to the driver if no prior limited license has been issued within the preceding 12 months and there have been no other such prior revocations. The [department] in issuing a limited license may impose the conditions and limitations which in its judgment are necessary to protect the interests of the public safety and welfare. The license may be limited to the operation of particular vehicles and to particular classes and times of operation. The limited license issued by the [department] shall clearly indicate the limitations imposed and the driver operating under a limited license shall have the license in the driver's possession at all times when operating as a driver.

## COMMENT

**This section is taken from the UVC Section 6-215 (1992).**

**Section 15. Surrender and Return of License; Duty of Officers.**

(a) The [department] upon canceling, suspending or revoking a license shall require that such license shall be surrendered to and retained by the [department].

(b) Any person whose license has been canceled, suspended or revoked shall immediately return the license to the [department].

(c) A law enforcement officer who in the course of duty encounters any canceled, suspended, or revoked driver's license shall seize and return such license to the [department] immediately.

COMMENT

**This section is taken from the UVC Section 6-217 (1992). It ensures that no offender will have the ability to use a driver's license while it is revoked.**

**Section 16. No Operation under Foreign License During Suspension or Revocation in This State.**

Any resident or nonresident whose driver's license or privilege to operate a motor vehicle in this state has been suspended or revoked as provided in this [Act] shall not operate a motor vehicle in this state under a license or permit issued by any other jurisdiction or otherwise during such suspension or after revocation until a new license is obtained when and as permitted under this [Act].

COMMENT

**This section is taken from the UVC Section 6-218 (1992). This section prohibits the attempt to circumvent the revocation laws by crossing state lines.**

**Section 17. Right of Appeal to Court.**

(a) Except as provided in subsection (b), a person whose license has been denied, cancelled or revoked by the [department] shall have the right to file a petition within 30 days thereafter for a hearing in the matter in [a court of record] in the county wherein such person resides, or in the case of a nonresident's operating privilege, in the county in which the main office of the [department] is located. The [court of record] is hereby vested with jurisdiction and it shall set the matter for hearing upon 30 days' written notice to the [department], and take testimony, examine the facts of the case, and determine whether the petitioner is entitled to a license or is subject to denial, cancellation or

revocation of license under the provisions of this [Act].

(b) Subsection (a) is inapplicable to a person whose license cancellation or revocation is mandatory under this [Act], or whose license has been revoked under Section 8 of this [Act].

(c) Any person whose driving privilege has been revoked under the provisions of Section 8 may petition the [court of record] in the county in which he resides for review of the decision on administrative review conducted under Section 12. The petition for review shall state the factual and legal claims upon which the petitioner relies, and shall be filed within [15, 30, or other appropriate number] days after notice of the decision on administrative review, together with proof of service of a copy thereof upon the [department]. The court shall set the matter for review upon thirty days' written notice to the [department] upon receipt of the record. The review shall be on the record without taking additional testimony. If the court finds that the [department] exceeded its constitutional or statutory authority, made an erroneous interpretation of the law, acted in an arbitrary and capricious manner, or made a determination which is unsupported by the evidence in the record, the court may reverse the [department's] determination. Otherwise, the court shall affirm the [department's] determination. Filing the petition for appeal shall not stay the revocation.

(d) Any person whose license has been suspended is entitled to judicial review under [cite law comparable to § 15 of the Model State Administrative Procedure Act, 14 Uniform Laws Annotated (1980)].

COMMENT

**General. This section is taken from the UVC Section 6-219 (1992). This section specifies the substantive and procedural requirements relative to judicial review of the administrative determination following a hearing: note that the person must exhaust the administrative hearing remedy before judicial review is available. The review is on the record established by the [department] at the hearing. The law does not permit the court to hold a new hearing or to redetermine the facts. The court's review is strictly limited to the grounds for reversing the [department] which are listed in this section.**

**Section 18. Driving While License Suspended or Revoked.**

(a) Any person who drives a motor vehicle on any street or other roadway of this state at a time when

such person's privilege to do so is suspended or revoked shall be guilty of a misdemeanor and upon conviction shall be punished by imprisonment for not less than [two days] nor more than [six months] and there may be imposed in addition thereto a fine of not more than [\$500].

(b) Upon receiving a record of conviction of any driver for a violation of subsection (a) or any law or ordinance regulating the operation of motor vehicles where the offense was committed at a time when such person's license was suspended or revoked, the [department] may extend the period of suspension or revocation for an additional period of one year from and after the date upon which the period of suspension or revocation would otherwise have terminated.

## COMMENT

**This section is taken from the UVC Section 6-303 (1992). For license revocations to be effective, they must be enforced. It is important to attach meaningful sanctions for failure to comply. A minor fine or minimum punishment is usually viewed by the offender as worth the risk of violating the revocation. To maximize the deterrent value of license revocation, it must be certain and highly visible. The offense of driving while license revoked makes it clear that this is not acceptable behavior or even behavior which we will tolerate. It ensures safety to the public on the highways by keeping drivers off the road who are already known dangerous drivers.**

### ***Section 19. Driving While Under the Influence of Alcohol or Other Drugs.***

(a) A person shall not drive a motor vehicle while:

(1) the alcohol concentration in such person's blood or breath as measured within three hours of the time of driving is .08% or more; (if proven by a preponderance of evidence, it shall be an affirmative defense to a violation of this subsection that the defendant consumed a sufficient quantity of alcohol after the time of driving a motor vehicle and before the administration of the evidentiary test to cause the defendant's alcohol concentration to be .08% or more. The foregoing provision shall not limit the introduction of any other competent evidence bearing upon the question whether or not the person violated this section, including tests obtained more than three hours after such alleged violation.)

(2) under the influence of alcohol;

(3) under the influence of any other drug or combination of other drugs to a degree which impairs the person's ability to drive safely;

(4) the presence of a controlled substance is in the person's blood;

(5) under the combined influence of alcohol and any other drug or drugs to a degree which impairs the person's ability to drive safely; or

(6) the alcohol concentration in such person's blood or breath as measured within three hours of the time of driving is any measurable or detectable amount and the person is under age 21.

(b) It is a defense to subsection (a)(4) that the accused person consumed the controlled substance under a valid prescription or order of a practitioner who acted in the course of the practitioner's professional practice.

(c) In addition to the provisions of Section 21, every person convicted of violating this section shall be subject to the provisions of the [Model Demand Reduction Assessment Act] and be punished by imprisonment for not less than [10 days] nor more than [one year], or by fine of not less than [\$100] nor more than [\$1,000], or by both such fine and imprisonment, and on a second or subsequent conviction, such person shall be punished by imprisonment for not less than [90 days] nor more than one year, and, in the discretion of the court, a fine of not more than [\$1,000].

## COMMENT

**General.** This section is taken from the UVC Section 11-902 (1992). Paragraphs (a)(4) and (6) creating a per se violation for the presence of a controlled substance in the body are taken from the Indiana Code Section 9-30-5-1(b) and (c).

**Paragraph (a)(1).** This subsection makes it a per se violation to have an alcohol concentration of .08% or more. This level is based on the research which shows that ability to drive is dangerously affected at this level. It is also based on the reduction in fatalities which has occurred in several states, California in particular, by lowering the per se to this level.

**Paragraph (a)(2).** The violation in this subsection is simply being under the influence of alcohol. No statutory definition is provided for the phrase "under the influence", however, all states have a definition in their state jury instructions.

Paragraph (a)(3). This subsection makes it a violation to be under the influence of drugs other than alcohol. The same definition of "under the influence" may be used in both paragraphs (2) and (3).

Paragraph (a)(4). A *per se* violation is established in paragraph (6) at any measurable amount for under age 21 persons because it is a violation for them to consume any alcohol. With the same type of rationale, this subsection creates a *per se* violation for the presence in the body of a controlled substance. A defense for prescriptions is given in subsection (b). However, a person who is impaired by drugs, whether used under prescription or not, is a danger to the public and must be removed from the highways.

Paragraph (a)(5). Polydrug use is common. This paragraph ensures that individuals who combine drugs will not be able to avoid the arm of the law. For example, a person who consumes alcohol but at an amount lower than the *per se* violation, and combines it with another substance, such as marijuana, will still commit this violation if the person's ability to drive is impaired.

Paragraph (a)(6). This paragraph matches the driver's license sanction for driving with a measurable or detectable amount of alcohol for drivers under age 21, with a criminal sanction. Since drivers under age 21 are prohibited from consuming alcohol at all, this provides for a criminal penalty as well. The options available under this statute are available to the offender under age 21. Assessment and treatment at this stage is crucial to avoiding an alcohol or other drug abuse problem or stopping it from growing. This youthful offender will also still have the options of deferred sentencing, probation, etc. to avoid a criminal record, *if* he or she successfully completes the programs ordered by the court.

Subsection (b). This subsection provides a defense after the *per se* violation for use of controlled substance with a prescription. However, it is not a blanket defense. The controlled substance must have been used according to the prescription and the prescription should be according to normal professional practice. If a person abuses a prescription it will not be a defense. The practitioner must also state that the prescription was given according to usual practice. If a driver uses a prescription drug which should not be used while operating machinery and the practitioner has told the driver this or a warning label appears on the container, the driver has still committed the criminal offense. Even though it is a properly dispensed prescription, the driver is

required to follow the directions and restrictions of the drug prescribed.

Subsection (c). This subsection establishes the parameters for criminal penalties in terms of fines and incarceration. It is important that a minimum incarceration sentence be given, even though part of it may be suspended, in order to assure completion of any treatment or educational program ordered under Section 21 of this [Act]. It is also important that the seriousness of this offense be reflected in the penalties.

## ***Section 20. Chemical and Other Tests.***

(a) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while driving a motor vehicle while under the influence of alcohol or other drugs, evidence of the concentration of alcohol or other drugs in a person's blood or breath at the time alleged, as determined by analysis of the person's blood, urine, breath or other bodily substance, shall be admissible. Where such a test is made the following provisions shall apply:

(1) Chemical analyses of the person's blood, urine, breath, or other bodily substance to be considered valid under this section shall have been performed according to methods approved by the [state department of health or single state authority on alcohol and other drugs] and by an individual possessing a valid permit issued by the [state department of health or single state authority] for this purpose. The [state department of health or single state authority] is authorized to approve satisfactory techniques or methods; to ascertain the qualifications and competence of individuals to conduct such analyses; and to issue permits which shall be subject to termination or revocation at the discretion of the [state department of health or single state authority].

(2) When a person shall submit to a blood test at the request of a law enforcement officer under the provisions of Sections 8, 9 or 11, only a physician or a registered nurse [or other qualified person] may withdraw blood for the purpose of determining the alcohol or other drug content therein. This limitation shall not apply to the taking of breath or urine specimens.

(3) The person tested may have a physician, or a qualified technician, chemist, registered nurse, or

other qualified person of the person's own choosing administer a chemical test or tests in addition to any administered at the direction of a law enforcement officer. The failure or inability to obtain an additional test by a person shall not preclude the admission of evidence relating to the test or tests taken at the direction of a law enforcement officer.

(4) Upon the request of the person who shall submit to a chemical test or tests at the request of a law enforcement officer, full information concerning the test or tests shall be made available to the person or the person's attorney.

(b) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while driving a motor vehicle while under the influence of alcohol or other drugs, the concentration of alcohol or other drugs in the person's blood or breath at the time alleged as shown by analysis of the person's blood, urine, breath, or other bodily substance shall give rise to the following presumptions:

(1) If there was at that time an alcohol concentration less than .08%, or in the case of persons under age 21, an alcohol concentration less than .02%, such fact shall not give rise to any presumption that the person was or was not under the influence of alcohol, but such fact may be considered with other competent evidence in determining whether the person was under the influence of alcohol.

(2) If there was at that time an alcohol concentration of .08% or more, it shall be presumed that the person was under the influence of alcohol.

(3) The foregoing provisions of this subsection shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether the person was under the influence of alcohol.

(c) If a person under arrest refuses to submit to a chemical test under the provisions of Sections 8 or 9, evidence of refusal shall be admissible in any civil or criminal action or proceeding arising out of acts alleged to have been committed while the person was driving a motor vehicle while under the influence of alcohol or other drugs.

#### COMMENT

**General.** This section is taken from the UVC Section 11-903 (1992). It establishes the procedures to ensure

that proper chemical tests are taken without risk to the persons involved. It also defines the presumptions that will arise out of the use of the chemical tests.

**Subsection (a).** This paragraph makes it clear that the provisions of this section apply to civil or criminal actions or proceedings.

**Paragraph (a)(1).** This subsection requires the appropriate state agency to establish the rules, procedures, protocols, or regulations for making chemical analyses of bodily substances. This provides the standard for a court to judge admissibility and credibility of chemical test evidence. The agency may wish to consider testing procedures for alcohol and other drugs by scientific methodology associated with hair or other such sample of the human body capable of revealing the presence of alcohol or other drugs or their metabolites. In approving such an alternative testing procedure, the agency should be satisfied that the scientific methodology equals or exceeds the quality and protection established by the National Laboratory Certification Program's certification and testing procedures involving urine.

**Paragraph (a)(2).** This subsection provides additional requirements for competent personnel in the taking of blood tests which do not apply in the case of breath or urine specimens.

**Paragraph (a)(3).** The person being tested may also have a separate test taken by the qualified person of the person's choice. Although the person may have this independent test, any failure or inability to get one will not preclude the use or admission of the state's test.

**Paragraph (a)(4).** Full information about the test is available to the person who submitted to the test, upon his or hers request.

**Subsection (b).** This subsection establishes several presumptions which apply to both civil and criminal actions or proceedings.

**Paragraph (b)(1).** There is no presumption that a person was not under the influence of alcohol with an alcohol concentration below .08%. Significant scientific research has shown that impairment of the ability to drive a vehicle occurs well below .08% BAC.

**Paragraph (b)(2).** An alcohol concentration of .08% or more does give rise, however, to the presumption that the person was under the influence of alcohol. Research has shown that all persons are impaired and should not drive a vehicle at this level.

**Paragraph (b)(3).** The presumptions about alcohol concentrations will not limit the introduction of any other kinds of competent evidence. Regardless of the chemical test result and any presumptions which may arise, the parties may still present evidence of driving behavior, field test performance, statements, physical evidence, and any other competent evidence.

**Subsection (c).** Under this subsection the person's refusal to submit to a chemical test is admissible in a civil or criminal action or proceeding. This is a well established principle which was decided by the U.S. Supreme Court in 1983 in *South Dakota v. Neville*, 459 U.S. 553, 103 S.Ct. 916, 74 L.Ed.2d 748. In that case, the court held that it is not a violation of a person's constitutional right against self incrimination to admit evidence of a refusal to take a chemical test in this type of case.

### **Section 21. Post Conviction Examination and Remedies.**

Option 1 [(a) If at the time of sentencing of any person convicted of violating Section 19, the person has not undergone an assessment pursuant to the [Model Criminal Justice Treatment Act], the court shall order an assessment to be conducted pursuant to the [Model Criminal Justice Treatment Act.] If recommended by the assessment program, the court shall order the person to participate in a treatment program under conditions set forth in the [Model Criminal Justice Treatment Act.]

(b) Upon application for a driver's license by any person ordered to participate in a treatment program, whose license has been suspended or revoked, the results of the assessment referred to in subsection (a) and a report of the progress of the treatment ordered, shall be forwarded by the applicant to the [department] for consideration [by the health advisory board.]

(c) The department may [after receiving the advice of the health advisory board] issue a license to such person with conditions and restrictions consistent with the person's treatment or education program and with protection of the public, notwithstanding the provisions of Section 13.]

Option 2 [(a) Before sentencing any person convicted of Section 19, the court shall order an assessment to be conducted by an assessment program as defined by the [single state authority on alcohol and other drugs] to determine whether the person needs or would benefit from substance abuse or addiction treatment .

(b) In addition to the penalties imposed by Section 19, and after receiving the results of the assessment in subsection (a), the court shall order a person to participate in a treatment program recommended by the assessment program, including an inpatient treatment facility at a state institution. Constructive participation in a treatment program may be a condition of probation. The court shall designate a treatment program as defined by the [single state authority on alcohol and other drugs] to provide treatment to the convicted person. Nothing in this [Act] shall prevent a designated treatment program from refusing a referral under this [Act] if the program deems the person inappropriate for admission. In addition, a treatment program has the right to immediately discharge any person who fails to comply with the program rules and treatment expectations or who refuses to constructively engage in the treatment process.

(c) Any person subject to this section may be examined by a physician of such person's own choosing and at such person's own expense, and the results of any such examination shall be considered by the court.

(d) At any time after a court orders a person to participate in a treatment program, the person or the person's attorney, relative or attending physician, may petition the court to modify the order. In determining whether to make a modification, the court shall consider the recommendations of the treatment program.

(e) Upon application for a driver's license by any person ordered to participate in a treatment program, whose license has been suspended or revoked, the results of the assessment referred to in subsection (a) and a report of the progress of the treatment ordered, shall be forwarded by the applicant to the [department] for consideration [by the health advisory board.]

(f) The department may [after receiving the advice of the health advisory board] issue a license to such person with conditions and restrictions consistent with the person's treatment program and with protection of the public, notwithstanding the provisions of Section 13.]

#### COMMENT

**General.** This section is taken from the UVC Section 11-904 (1992).

**Section 21 provides two options which require that all offenders convicted (definition of conviction is given in Section 4 of this [Act]) of the crime of driving under the influence of alcohol and other drugs shall be given an assessment to determine whether the person has a sub-**

stance abuse problem and what type of treatment is most appropriate for the type of problem identified. Option 1 applies in states which adopt the [Model Criminal Justice Treatment Act.] The assessment and subsequently ordered treatment are to be conducted in accordance with the [Treatment Act.] Option 2 provides assessment and treatment requirements for states which do not enact the [Model Criminal Justice Treatment Act.] This section imposes assessment and treatment where appropriate, in addition to the other penalties in Section 18. Treatment and assessment are not to be done in lieu of other sanctions. In fact, a combination of sanctions including treatment is most appropriate because it provides for mechanisms to ensure that treatment is completed. In addition, successful completion of an appropriate treatment program reduces the chances that the person will commit additional crimes. The court has authority to review the offender's progress in treatment and modify any order applicable thereto.

In many states the department will have a health advisory board, perhaps with another name, which reviews applications for driver's licenses from individuals with health problems which may impact the ability to drive, i.e. epilepsy, heart conditions, eye impairments, and so forth. This board can also be drawn upon for review of

the applicant's progress or lack thereof, in treatment regarding alcohol and other drug problems. This advisory board can advise the department on whether the applicant should be given a driver's license and if it should be restricted in any way. The safety of the public will be a major concern to the department in this case.

### ***Section 22. Severability Provision.***

If any provisions of this [Act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

### ***Section 23. Effective Date.***

This [Act] shall take effect on [reference to normal state method of determination of effective date][reference to specific date].

# Appendix F

# State Legislative Fact Sheet

## .08 Illegal Per Se Level

The U.S. Department of Transportation's National Highway Traffic Safety Administration (NHTSA) encourages states to have laws that make it illegal for a person to operate a motor vehicle if he or she has a blood alcohol concentration (BAC) of .08 or more (i.e., an illegal per se law at this level). Alcohol concentration is to be based on either the number of grams of alcohol in 100 milliliters of blood or the number of grams of alcohol in 210 liters of breath.

- At the present time only five states have an illegal per se law at the .08 level: California, Maine, Oregon, Utah and Vermont.
- Forty-one other states and the District of Columbia have illegal per se laws at the .10 level.
- Four states have no illegal per se law: Maryland, Massachusetts, South Carolina and Tennessee. In addition, the Commonwealth of Puerto Rico has no such law.

### Key Facts

- In 1991, 48 percent of the 41,462 motor vehicle related deaths were alcohol-related. This percentage translates into 19,900 alcohol-related deaths last year.
- Over 80 percent of drivers involved in fatal crashes with positive BACs had levels exceeding .08.
- A BAC level of .08 means about four drinks within one hour on an empty stomach for an average male weighing 160 pounds.

### Why .08?

Research indicates that many drivers are impaired at low blood alcohol levels. Some research indicates that such impairment starts as low as .015. By the time a level of .08 is reached, even experienced drinkers show driving skill impairment.

Recent research indicates that the relative fatality risk for drivers in single vehicle crashes with BACs between .05 and .09 is over 11 times greater than for drivers with a zero BAC.

Lowering the limit to .08 would set the boundary at a level at which driving skills are proven to be compromised for the vast majority of drivers. It is a limit which is reasonable and necessary for the driving safety of all.

This "Fact Sheet", published by the National Highway Traffic Safety Administration (NHTSA), has been reformatted to be consistent with the other material in Volume III.

**Life Saving Benefits of 0.08**

On January 1, 1990, California reduced the legal limit for blood alcohol concentration from .10 to .08. Six months later, it instituted an Administrative Per Se law, allowing police and driver licensing authorities to suspend the driver's license of drivers who fail or refuse an alcohol test. NHTSA studied the effects of these laws, and found that while the study could not quantify the separate effects of each law, alcohol-related fatalities declined by 12 percent after January 1, 1990. A survey of 1,600 California drivers in May, 1991 disclosed that eight out of ten were aware that the BAC limit had become stricter. In addition, half of the survey respondents who drink alcohol indicated they are less likely to drive after drinking, as a result of the lowered limit.

**Impact on the Criminal Justice System**

California found that the lowered limit had little impact on court administrators or judges. The main impact has been on prosecutors' decisions concerning whether cases should be filed. Previously, DWI arrestees with BACs below .12 typically were allowed to plea to reduced charges. Since the limit was changed, this plea-bargain "cut off" has dropped to about .10 percent. No increases have been reported in the proportion of DWI defendants pleading guilty, requesting jury trials or appealing convictions.

**Who Supports .08?**

The following organizations support a BAC limit of .08 or lower:

- American Medical Association
- American Association of Neurological Surgeons
- American Spinal Injury Association
- National Safety Council
- National Committee on Uniform Traffic Laws and Ordinances
- National Commission Against Drunk Driving
- National Highway Traffic Safety Administration
- Mothers Against Drunk Driving (MADD)
- Remove Intoxicated Drivers (RID)
- Insurance Institute for Highway Safety

A number of countries have BAC limits of .08 or below. For example, Austria, Canada, Denmark, France, Italy, New Zealand, Spain, Switzerland, and the United Kingdom have an .08 limit, while Finland, Iceland, Japan, the Netherlands, and Norway have an .05 limit. In 1990 Sweden lowered its BAC limit to .02. Australian states have adopted either .08 or .05 limits.

**Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991**

ISTEA provides incentive grants to states that achieve at least four of the following milestones:

- An expedited administrative procedure for suspending the license of drunk drivers;
- A law setting a .10 blood alcohol concentration as evidence of driving while intoxicated (after three years, it must drop to .08);
- A statewide sobriety checkpoint program;
- A self-sustaining drunk driving prevention program; and
- A program to prevent drivers under age 21 from obtaining alcoholic beverages.

States can also earn supplemental grants, one of which is based on **meeting the .08 BAC criteria in the first three years of the incentive program.**

#### **Additional Sources of Information**

Alcohol Limits for Drivers: A Report on the Effects of Alcohol and Expected Institutional Responses to New Limits. NHTSA, Report Number DOT-HS-807-692, April 1991.

Alcohol-Related Risk of Fatal Driver Injuries in Relation to Driver Age and Sex. Zador, Paul, Insurance Institute for Highway Safety, Arlington, VA, April 1989.

Driving Under the Influence: A Report to Congress on Alcohol Limits. NHTSA, in press, 1992.

The Effects of Low Doses of Alcohol on Driving Skills: A Review of the Evidence. Moscovitz, Herbert and Robinson, Christopher D., National Technical Information Service, Springfield, VA, July 1987.

The Effects Following the Implementation of an 0.08 BAC Limit and an Administrative Per Se Law in California. NHTSA, Report Number DOT-HS-807-777, August 1991.

Impaired Driving Issues Compendium. Prepared by Mothers Against Drunk Driving, Irving, TX 1988.

Zero Alcohol and Other Options. Special Report 216, Transportation Research Board, National Research Council, Washington, DC, 1987.

# State Legislative Fact Sheet

## Zero-Tolerance Laws to Reduce Alcohol-Impaired Driving by Youth

The U.S. Department of Transportation's National Highway Traffic Safety Administration (NHTSA) encourages States to have laws designed to reduce drinking and driving among younger drivers. Such laws would:

- establish that any measurable amount of alcohol in the blood, breath, or urine of a driver under age 21 would be an "illegal per se" offense; and
- provide for immediate driver license suspension periods for those under age 21 who exceed the applicable blood alcohol concentration (BAC) limit.

All 50 States and the District of Columbia now have laws that prohibit the purchase and public possession of alcoholic beverages by those under the age of 21. Therefore, it would seem reasonable to expect drivers under the age of 21 to have no alcohol in their systems, and the appropriate BAC for these drivers would be zero. However, NHTSA recognizes that, given the present level of technology of alcohol breath testing devices, it is difficult for law enforcement officers to detect extremely low amounts of alcohol in the body. It is for this reason that the agency generally supports States that have laws establishing a BAC level of .02 or less at which it is illegal for those under the age of 21 to operate a motor vehicle. Also, it should be noted that underage drinking drivers represent a greater risk for crash involvement than do older drivers.

Younger drivers place a high value on their driver's licenses, and the threat of license revocation has proved to be an especially effective sanction for this age group.

### Key Facts

- More than 43% of all deaths of 15 to 20 year olds result from motor vehicle crashes. An estimated 47% of these fatalities were in alcohol-related crashes in 1991. Estimates are that 3,105 persons in this age group died in alcohol-related crashes in 1991.
- In 1991, 20% of 15 to 20 year old drivers involved in fatal crashes were intoxicated. The alcohol involvement rate for young drivers, based on the total licensed driver population, is about twice that of the over 21 age driver.
- NHTSA estimates that 941 lives were saved in 1991 by age 21 drinking laws. Since 1982, it is estimated that almost 8,743 lives have been saved in the affected ages by these laws. However, young people under age 21 are still greatly over-represented in alcohol-related crashes and fatalities.

This "Fact Sheet", published by the National Highway Traffic Safety Administration (NHTSA), has been reformatted to be consistent with the other material in Volume III.

- Driver license revocation or suspension has proven to be an effective deterrent in reducing crashes and the reoccurrence of alcohol-related driver offenses in the general population. Some state licensing officials believe sanctions have an even greater effect on younger drivers, since they value their driver's license so highly.

### **States with Special Laws for Youth**

Fourteen states have lower BAC limits for underage drivers: Arizona, California, Georgia, Maine, Maryland, New Hampshire, New Mexico, North Carolina, Ohio, Oregon, Rhode Island, Utah, Vermont and Wisconsin. These BAC limits vary from .00 to .06%. Only Arizona, Maryland, Maine, Rhode Island and Utah provide for lower limits for everyone below 21. NHTSA supports the use of age 21 as an appropriate threshold for lower BAC limits and longer suspension periods, which corresponds to age 21 alcohol purchase laws.

### **How The Laws Work**

Typically, so-called zero tolerance laws provide that any amount of alcohol in the body of a driver under age 21 (generally measured as .02% BAC or greater) is an offense for which the driver's license may be suspended for a period varying from 10 days to three months. These laws should allow a police officer to require a breath test from any driver under the age of 21, if the officer has probable cause to believe that the individual has been drinking (and should not require that the officer have probable cause to suspect actual impairment). Refusal to take such a test should result in license suspension under implied consent or administrative license revocation (ALR) laws. In the 31 States and the District of Columbia with ALR laws, providing a sample that is positive for alcohol should result in license suspension under that law. Currently, States vary in whether the special BAC level for underage drivers is included in their ALR law.

Other states, such as Delaware, Illinois and Massachusetts, have taken the approach of extending the period of license suspension and increasing other penalties for underage youth without changing the BAC definition of an offense. Many states have extended the period of license suspension and also changed the BAC definition.

### **Cost Benefit Estimates**

An in-progress NHTSA evaluation of the .02% law in Maryland has shown a significant decrease in the number of drivers under age 21 involved in crashes who, police report, "had been drinking." A study of the .02% BAC law in Maine based on self-reported behavior showed that drivers under age 21 claim they drive less after drinking and have been involved in fewer crashes. This was especially true among those drivers who indicated they were aware of the law.

Making any amount of alcohol in the body of an underage person an offense can make the enforcement effort easier. If the officer has any reason to suspect that the individual has been drinking, he or she can demand a breath test and take action to arrest the underage driver. Passive sensors, which can detect low BACs, permit the police to identify individuals with small amounts of alcohol in their bodies. This has the potential to reduce enforcement and adjudication time and expense, particularly if handled in an administrative process.

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### **Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991**

ISTEA provides incentive grants to states that achieve at least four of the following milestones:

- An expedited administrative procedure for suspending the license of drunk drivers;
- A law setting a .10 blood alcohol concentration as evidence of driving while intoxicated (after three years, it must drop to .08);
- A statewide sobriety checkpoint program;
- A self-sustaining drunk driving prevention program; and
- A program to prevent drivers under age 21 from obtaining alcoholic beverages.

States can also earn supplemental grants, one of which is based on **adopting the .02 blood alcohol concentration limit for drivers under age 21**.

### **Additional Sources of Information**

A number of national organizations and reports have supported legislation of this type. Generally, the recommendation is for longer license suspension for driving with any measurable BAC for all drivers under the legal drinking age of 21. The organizations and reports are as follows:

Lower BAC Limits For Youths: Evaluation of the Maryland .02 Law. NHTSA study in-progress.

An Improved Driver Entry System For Young Novice Drivers. NHTSA in cooperation with the American Association of Motor Vehicle Administrators, Report No. DOT-HS-807-469, Washington, D.C. September 1989.

Preliminary Effect of Maine's 1982 .02 Laws to Reduce Teenage Driving After Drinking. R. Hingson et al, Boston, 1986.

Proceedings of the Surgeon General's Workshop On Drunk Driving. U.S. Department of Health & Human Services, Public Health Service, Washington, D.C., December 1988.

Proceedings of the Youth Forum on Traffic Safety Initiatives. NHTSA, Washington, D.C., 1990.

Youth Driving Without Impairment: Report on the Youth Impaired Driving Public Hearings. National Commission Against Drunk Driving, Report Number DOT-HS-807-347, Washington, D.C., December 1988.

Youth Legislative Compendium. Prepared by Mothers Against Drunk Driving, Irving, TX, 1990.



# State Legislative Fact Sheet

## Administrative License Revocation

The U.S. Department of Transportation's National Highway Traffic Safety Administration (NHTSA) encourages states to require prompt, mandatory suspension of drunk drivers' licenses for alcohol and/or other drug test failure and refusal. Traffic crashes are the greatest single cause of death for every age between 6 and 33, and 56 percent of those fatalities involve alcohol and/or other drugs. The suspension or revocation of a person's driver's license for driving while under the influence of alcohol or other drugs has proven to be a most successful deterrent to this behavior. Administrative license revocation (ALR) laws are based on objective tests (chemical, breath or blood), similar to "illegal per se" criminal laws against impaired driving. Administrative license revocation allows police and driver licensing authorities to revoke the driver's license swiftly, without long delays while waiting for criminal trial, and protects the offender's right to due process through an appeal process.

### Key Facts

- In 1991, 41,462 persons were killed and many times that number were seriously injured in highway crashes in the U.S. Forty-eight percent of these fatalities were alcohol-related.
- As of July 1, 1992, thirty-one states and the District of Columbia have adopted some form of administrative license revocation.
- To date, all challenges in state courts have found administrative revocation laws constitutional.
- The Supreme Court has found that the right of due process is not violated if a driver's license is suspended prior to an administrative hearing, as long as provisions are made for a swift post-suspension hearing. (*Mackey v. Montrym*, 43 U.S. 1 (1979)).
- An independent study found that administrative license revocation laws reduced fatal crashes approximately nine percent during high-risk (late night) periods of alcohol involvement.
- Minnesota, New Mexico, Nevada, North Carolina, Oklahoma, Oregon, West Virginia and Wisconsin have observed significant reductions in alcohol-related fatal crashes following the implementation of administrative license revocation procedures.
- Based on data obtained in an agency-sponsored study of the effects of certain types of legislation, NHTSA estimates that 347 additional lives could have been saved, in 1990, if administrative license revocation laws had been adopted in the 21 states without administrative revocation.

This "Fact Sheet", published by the National Highway Traffic Safety Administration (NHTSA), has been reformatted to be consistent with the other material in Volume III.

- Publicity is an important factor. A NHTSA-sponsored study carried out in Nevada found a 12 percent reduction in alcohol-related crashes following implementation of a publicity campaign designed to inform the public about the administrative license revocation procedure.
- Studies have shown that very few drivers whose licenses are revoked for drinking and driving offenses actually lose their jobs because of the suspension. A study in Delaware determined that only 1.5 percent of the drivers whose licenses were revoked lost their jobs, and a number of these individuals had already been at risk of losing them due to poor performance, alcoholism, etc. Similarly, a Mississippi study showed that the short first-time DWI offenders did not have a significant impact on their income status.

#### **What Provisions Should Be Included in an Administrative Revocation Law?**

- The language of the administrative license revocation law should be consistent with the provisions of the state's administrative procedures law.
- The arresting officer should, at the time of arrest, serve the notice of revocation, take the offender's license and issue a temporary license.
- The opportunity for an administrative appeals hearing should be made available to the driver.
- The hearing request should not be allowed to delay the revocation. If the hearing request does not stay the revocation, between 24 and 30 percent of the offenders request a hearing. If the hearing request stays the revocation, nearly 100 percent of the offenders request a hearing.
- The initial revocation for test failure should be at least 90 days with full revocation for 30 days, followed by at least 60 days of restricted driving. Restricted driving licenses should be permitted only in very limited circumstances, and only after an initial "hard" suspension period. The initial revocation for a test refusal should be a full 90 days, with no restricted driving privileges. For a repeat offense within five years, the revocation should be a full revocation for one year, with no restricted driving privileges.
- The Administrative sanction is handled separately from the criminal proceeding. The outcome of this administrative action should have no bearing on the criminal proceedings, including sanctions.

#### **How Much Does This Type of Program Cost?**

A 1991 NHTSA-sponsored study looked at the cost and benefits associated with administrative license revocation laws in Illinois, Mississippi and Nevada. The study found that start-up and operating costs were more than covered by reinstatement fees assessed to offenders. In addition, the annual savings in costs of night-time crashes ranged from \$37 million in Nevada to \$104 million in Mississippi.

#### **How Can This Type Program Be Financed?**

The offenders, rather than taxpayers, should pay for these programs. Some states have significantly increased the reinstatement fee for those whose licenses are revoked for driving while intoxicated.

icated (DWI), some have raised all reinstatement fees, and others have increased all license application and renewal fees. Other fines, fees and taxes that can be considered include alcoholic beverage taxes that can be earmarked for alcohol program expenses.

### **Who Supports Administrative License Revocation?**

The following organizations have publicly supported administrative license revocation:

- Advocates for Highway and Auto Safety
- Allstate Insurance
- American Alliance for Rights and Responsibilities
- American Association of Motor Vehicle Administrators
- American Automobile Association
- American Coalition for Traffic Safety
- American Trucking Association
- The Century Council
- Federal Highway Administration
- GEICO
- General Federation of Women's Clubs
- Highway Users Federation for Safety and Mobility
- Insurance Information Institute
- Insurance Institute for Highway Safety
- International Association of Chiefs of Police
- Kemper Insurance Group
- Mothers Against Drunk Driving (MADD)
- Motor Vehicle Manufacturers Association
- National Association of Governors' Highway Safety Representatives
- National Association of Independent Insurers
- National Association of State Alcohol and Drug Abuse Directors
- National Association of State Emergency Medical Service Directors
- National Coalition to Prevent Intoxicated Driving
- National Commission Against Drunk Driving
- National Highway Traffic Safety Administration

- Operation Lifesaver
- National Safety Council
- National Transportation Safety Board
- Nationwide Insurance
- Office of Substance Abuse Prevention
- Police Executive Research Forum
- Remove Intoxicated Drivers (RID)
- Students Against Driving Drunk (SADD)
- Traffic Safety Now
- U.S. Department of Justice
- USAA Insurance

### **The Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991**

ISTEA provides incentive grants to States that achieve at least four of the following milestones:

- An expedited administrative procedure for suspending the license of drunk drivers;
- A law setting a .10 blood alcohol concentration as evidence of driving while intoxicated (after three years, it must drop to .08);
- A statewide sobriety checkpoint program;
- A self-sustaining drunk driving prevention program; and
- A program to prevent drivers under age 21 from obtaining alcoholic beverages.

States can earn more grant funds by meeting additional goals.

### **Research Studies:**

An Assessment of the Effects of Publicizing Administrative License Revocation for DWI in Nevada. John Lacey, et al, University of North Carolina Highway Safety Research Center, DOT-HS-807-600, March 1990.

Changes in Alcohol-Involved Fatal Crashes Associated with Tougher State Alcohol Legislation. Sigmastat, Inc. for NHTSA, July 1989.

Cost-Benefit Analysis of Administrative License Suspension. John Lacey, et al, Mid-America Research, DOT-HS-807-689, January 1991.

Fatal Crash Involvement and Laws Against Alcohol-Impaired Driving. Paul L. Zador, et al, Insurance Institute for Highway Safety, February 1989.

Impact of Driver's License Suspension on Employment Stability of Drunken Drivers. Elisabeth Wells-Parker and Pamela Cosby, Mississippi Alcohol Safety Education Program, Social Science Research Center, Mississippi State University, June 1987.

Sample State Administrative Driver License Suspension Forms, DOT-HS-807-547, March 1990.

**Additional Sources of Information:**

“Questions Most Frequently Asked About Administrative License Revocation”

“Reducing Crashes Through Administrative License Revocation”

“Administrative License Revocation Cost and Benefits”

“Court Cases Upholding Administrative Revocation Laws”

“Administrative License Revocation: Resource Manual”