

**SB**

**279**

WALTER J. HICKEL  
GOVERNOR



P. O. Box 110001  
Juneau, Alaska 99811-0001  
(907) 465-3500

STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

February 4, 1994

*The Honorable Rick Halford  
President of the Senate  
Alaska State Legislature  
State Capitol  
Juneau, AK 99801-1182*

*Dear Mr. President:*

*Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to operating or driving a motor vehicle, commercial motor vehicle, aircraft, or watercraft.*

*Sections 5, 7, 12, and 13 of the bill contain the main objective of the bill. Those sections contain provisions relating to implied consent for, and administration of, chemical tests to detect the presence of drugs in drivers of motor vehicles or commercial vehicles that are involved in accidents that cause death or serious physical injury to another person.*

*The use of drugs by motor vehicle drivers, both alone and in combination with alcohol, is a major traffic safety concern. The apprehension and successful prosecution of the drug-impaired driver has been and remains a major concern of law enforcement.*

*The state's implied consent law is contained in existing AS 28.35.031 and, for commercial motor vehicle drivers, in AS 28.33.031. These sections provide that a vehicle driver who is under arrest for driving while intoxicated is considered to have given "consent" to a chemical breath test to determine the amount of alcohol in the person's blood or breath. Existing AS 28.35.032 authorizes law enforcement officers to request that an arrested driver submit to that chemical breath testing.*

*Sections 5 and 7 of the bill amend the implied consent statutes (AS 28.33.031 and AS 28.35.031) to specify that a person who operates a motor vehicle or commercial*

The Honorable Rick Halford  
February 4, 1994  
Page 2

motor vehicle in this state is considered to have given consent to submit to a chemical test to determine the presence of both alcohol and drugs if the person is involved in an accident that causes death or serious physical injury to another person, even if the person is not under arrest. A specific definition for "serious physical injury" is provided in sec. 16 of the bill. Driving is a privilege granted by the state that can be conditioned upon consent to reasonable terms, such as consent to the chemical tests enumerated in AS 28.33.031 and AS 28.35.031 as amended by the bill.

Under existing AS 28.35.032(a), a person can refuse to submit to a chemical breath test; existing AS 28.35.032(f) makes the refusal a misdemeanor offense. Section 8 of the bill amends AS 28.35.032(a) to add references to the chemical tests provided for in secs. 5 and 7 of the bill; sec. 10 of the bill amends AS 28.35.032(f) in the same way. Several "housekeeping" amendments to AS 28.35.032(a) are also made by sec. 8 of the bill.

Under AS 28.35.032(a) and 28.35.035, if a person has been notified of the penalties that will result from refusal to submit to a chemical breath test, and the person then refuses to submit, the test may not be given unless the person has been arrested and the arrest resulted from an accident that causes death or physical injury to another person. This bill does not change those provisions other than to add references to the additional chemical tests provided for in secs. 5 and 7 of the bill. See secs. 8, 12, and 13 of the bill.

Sections 1 - 4, 9, 11, and 14 of the bill make additional conforming amendments to statutes in AS 28 to refer to the chemical tests provided for in secs. 5 and 7 of the bill. The amendment to AS 28.33.190 in sec. 6 of the bill is generally to provide a definition for "controlled substance" in AS 28.33. That term is used in AS 28.33.031(a) as that statute is amended by sec. 5 of the bill. Additionally, the amendment to AS 28.33.190 will provide other needed definitions for AS 28.33.010 - 28.33.031. The existing language of AS 28.33.190 unnecessarily excludes those sections.

The amendments made by secs. 15 and 17 of the bill are to provide a definition of "controlled substance" for AS 28.35.029 - 28.35.039. The existing definition, which is specific to only AS 28.35.030, is repealed and is replaced by the same definition located in a general definition section for AS 28.35.029 - 28.35.039.

In my State of the State address on January 12, 1993, I identified "alcoholism, along with the abuse of other drugs," as "Alaska's number one health problem." I reiterated my commitment to dealing with this issue in my State of the State address this year, as well. This proposed legislation gives police and prosecutors the tools they need to

*The Honorable Rick Halford  
February 4, 1994  
Page 3*

*combat the significant highway safety problem presented by those drivers who use drugs and then cause fatal or serious injury accidents.*

*I urge your favorable action on this bill.*

*Sincerely,*

A handwritten signature in cursive script that reads "Walter J. Hickel". The signature is written in dark ink and is centered on the page.

*Walter J. Hickel  
Governor*

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER

P.O. BOX 111200  
JUNEAU, ALASKA 99811-1200  
PHONE: (907) 465-4322  
FAX: (907) 465-4352

February 17, 1994

The Honorable Loren Leman  
Chair, Senate State Affairs Committee  
Alaska State Legislature  
State Capitol  
Juneau, AK 99801-1182

Dear Senator Leman:

I respectfully request your consideration in scheduling a hearing for SB 279, "An Act relating to operating or driving a motor vehicle, commercial motor vehicle, aircraft, or watercraft."

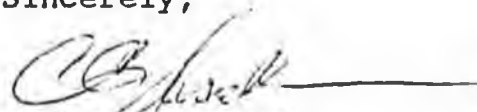
Despite a rising tide of public indignation, the wide variety of drugs and their availability and use in combination with alcohol or other drugs combine to produce a major public safety concern for Alaska's highways, accounting for more than half of all traffic deaths in Alaska. Based on the high rate of alcohol and drug related vehicle crashes involving injury and death in Alaska compared to the rest of the nation, SB 279 was introduced to provide law enforcement and prosecutors with the tools they need to combat the significant highway safety problems presented by those drivers who use drugs and then cause fatal or serious injury accidents.

Laws that will enhance the safety of driving on our roadways, and especially those laws which will help reduce the number of alcohol and/or drug related accidents and fatalities, are always a priority for this department.

To expedite the scheduling of a hearing, please find enclosed a copy of the bill, transmittal letter with sectional analysis, agency fiscal notes, and pertinent background information.

If you have questions or need further information, please contact Lee Ann Lucas at this office. Your efforts in bringing SB 279 before the Judiciary Committee for a hearing are greatly appreciated.

Sincerely,

  
Richard L. Burton  
Commissioner

Enclosures

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

Bill Version: SB 279  
(S) Publish Date: 2-4-94

Revision Date: \_\_\_\_\_  
Title: "An Act relating to driving a motor vehicle..."  
Sponsor: Rules/By Request of the Governor  
Requestor: Governor's Office

Department Affected: Department of Law  
BRU: Prosecution  
Component: All  
COMPONENT SERIAL NO. 0085 through 0090

EXPENDITURES/REVENUES:

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND &						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING:

1002 Federal						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Prepared by: Richard I. Peques, Director  
Division: Administrative Services Division

Phone: 465-3672  
Date: January 25, 1994

Approved by Commissioner: Bruce M. Botelho, Attorney General  
Agency: Department of Law

Date: January 25, 1994

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ANALYSIS CONTINUATION:

This bill makes several changes to state law to provide for "implied consent" for, and administration of, chemical tests to detect the presence of drugs in drivers of motor vehicles or commercial motor vehicles that are in accidents that cause death or serious physical injury to another person. Of particular importance, is the provision for blood chemical tests, after a serious accident, because drug use often goes undetected by breath chemical tests. Consequently, the bill will assist in the collection of better evidence for use by state prosecutors and will not, therefore, have a fiscal impact.

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

Bill Version: SB 279  
(S) Publish Date: 2-4-94

Revision Date: \_\_\_\_\_

Department Affected: Administration

Title: Relating to operating a motor vehicle

BRU: Office of Public Advocacy

Sponsor: Rules Committee

Component: Office of Public Advocacy

Requestor: Governor

COMPONENT SERIAL NO. 43

EXPENDITURES/REVENUES:

(Thousands of Dollars)

	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0	0	0	0	0	0
CHANGE IN REVENUES	0	0	0	0	0	0

FUNDING SOURCE:

(Thousands of Dollars)

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 94) cost: \$ 0

POSITIONS:

FULL TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Brant McGee, Director

Phone: 274-1684

Division: Office of Public Advocacy

Date: \_\_\_\_\_

Approved by Commissioner: Nancy Bear Usera

Date: 1/27/94

Agency: Administration

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1994 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_

Title: Relating to operating a motor vehicle

Sponsor: Rules Committee

Requestor: Governor

Department Affected: Administration

BRU: Public Defender Agency

Component: Public Defender Agency

COMPONENT SERIAL NO. 3540

EXPENDITURES/REVENUES:

(Thousands of Dollars)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL EXPENDITURES	0	0	0	0	0	0
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CHANGE IN REVENUES ( )	0	0	0	0	0	0
------------------------	---	---	---	---	---	---

FUNDING SOURCE:

(Thousands of Dollars)

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

Estimate of any current year (FY 94) cost: \$

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: John B. Salemi, Public Defender

Division: Public Defender Agency

Phone: 264-4400

Date: \_\_\_\_\_

Approved by Commissioner: Nancy Bear Usara, Commissioner

Agency: Department of Administration

Date: 12/27/93

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FISCAL NOTE

No. 2

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

Bill Version: SB 279

(S) Publish Date: 2-4-94

Revision Date: \_\_\_\_\_ Dept. Affected: Public Safety

Title: Mandatory Drug Alcohol Testing BRU: DPS Statewide Support

Component: Laboratory Services

Sponsor: Rules

Requestor: Governor COMPONENT SERIAL NO. 527

EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not included)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	49.6	49.6	49.6	49.6	49.6	49.6
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	49.6	49.6	49.6	49.6	49.6	49.6

CAPITAL						
---------	--	--	--	--	--	--

REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF Program Receipts						
1005 GF/MHTIA						
Other Interagency Rcpts.	49.6	49.6	49.6	49.6	49.6	49.6
TOTAL	49.6	49.6	49.6	49.6	49.6	49.6

Estimate of current year (FY 94) impact: \$ 0

POSITIONS:

FULL-TIME	1	1	1	1	1	1
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

See attached analysis.

Prepared By: Francis C. Allan Phone: (907) 269-5591

Division: Administrative Services Date: 01/10/94

Approved by Commissioner: *[Signature]* Date: 01/10/94

Agency: Richard J. Burton, Dept. of Public Safety

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Department of Public Safety  
Fiscal Note Analysis  
Law Log 94-0019  
Mandatory Drug/Alcohol Testing  
Page 3 of 4

In 1992, 382 major injury crashes involving approximately 550 drivers and 89 fatal crashes involving approximately 125 drivers were reported statewide.

Implementation of this legislation will require chemical test or tests to be administered at the direction of a law enforcement officer who has reasonable grounds to believe that a person was operating or driving a motor vehicle or commercial vehicle involved in an accident that causes death or serious physical injury to another person, for the purpose of determining the presence of controlled substances in that person's blood and urine, even if the person is not under arrest.

The Scientific Crime Detection Laboratory oversees all breath instrument tests statewide. Approximately 6,000 DWI breath tests are conducted per year by city and state. Additionally 250 blood tests are administered for the purpose of determining the alcohol content of the person's blood. It is estimated that approximately 100 chemical tests will be administered statewide per year to detect the presence of alcohol and/or controlled substances in drivers of motor vehicles or commercial vehicles that are involved in accidents that cause death or serious physical injury to another person.

To perform this function the Scientific Crime Detection Laboratory will require one additional scientist, a Criminalist I, who will be a trained Toxicologist. This employee will utilize a sophisticated Ion Trap Mass Spectrometer instrument to analyze urine and blood samples to determine the presence or the lack of the presence of alcohol and/or controlled substances. Other duties performed by this employee would include: instrumental identification of controlled substances; drug analysis of specimens from suspects in murder and assault cases; analyses of solid dosages of controlled substances; and other tasks associated with the Statewide Breath Alcohol Program such as instrument calibration and certification.

Currently, the Scientific Crime Detection Laboratory is not performing these toxicology analyses; they are sent out-of-state. To our knowledge, there are no laboratories in the state (other than this laboratory) equipped to do these analyses. Additionally, if court testimony is needed of the analyst, it is very costly to bring them up from the Lower 48 for court purposes.

Department of Public Safety  
Fiscal Note Analysis  
Law Log 94-0019  
Mandatory Drug/Alcohol Testing  
Page 3 of 4

It is anticipated that federal highway funds through the Highway Safety Planning Agency will be available to fund the initial three years of this position. Contingent upon the success of the program and review by the regional administrator, federal highway funds may be available to continue this position beyond the initial three year period.

PERSONAL SERVICES

Salary - Criminalist I Range 15, Step A	\$34,760
Benefits	<u>15,021</u>

Total Personal Services \$49,581

POSITION INFORMATION HAS BEEN UPDATED AND FUNDING HAS BEEN UPDATED.

12/30/93

Position Information Inquiry/Update

07:58:10

Position: 13-13#091	Project: 0	Salary Costs: 34,260.
Component: 13-63-06-02-01-10		Benefits Costs: 15,321.00
Scenario: 3 FY: 95	COLA %= 0.00	Total Costs: 49,581.07

-----  
 Actuals not available (Status: UNKNOWN ) Retirement Code: A  
 -----  
 \* Step: A for 12.0 months & Step: B for 0.0 months (total: 12.00 )  
 00/00/00 \* Merit Date; use merit defaults? N ( 0.0 @ & 0.0 @ )  
 0 \* Class/Sched Prefix: 1 Schedule: 1A (actual: )  
 \* Bargaining Unit: GG Range: 15 (actual: )  
 \* Location Code: EBA Place: ANCHORAGE  
 \* Job Class Code: P8371 Title: CRIMINALIST I \_\_\_\_\_  
 \* Seasonal Indic.: F Type: -  
 -----

Optional Override Salary Rates:

Monthly Rate: 0.00 for 0.0 months & rate of 0.00 for 0.0 months  
 Hourly Rate: 0.00 for 0.0 months Frozen at this rate? (Y/N): N

Press ENTER to update record; enter # or use PF key to go to another screen:  
 1=Premium pay info 2=Funding info 4=Code Translations 6=Calculations  
 7=MISC NEW POS DATA 8=Detail Report 12=Exit w/o update Selection: 0

S&C Aa zAa06 FX

**IMPLIED CONSENT LAW TABLE**  
(November 18, 1993)

State	Implied Consent Law Applies To DWI Alcohol and/or Drugs		Bodily Substances Tested				Who Selects Test?		More Than One Test Can Be Required	Statutory Citations
	Alcohol	Drugs	Blood	Breath	Urine	Saliva	Driver	Police		
AL	X		X	X	X			X	X <sup>1</sup>	§32-5-192(a)
AK	X			X			N/A	N/A		§28.35.031(a)
AZ	X	X	X	X	X			X	X	§26-691(A)
AR	X	X <sup>2</sup>	X	X	X			X <sup>2</sup>	X	§5-65-202 A, 203
CA	X	X	X <sup>4</sup>	X <sup>4</sup>	X <sup>4</sup>		X		X	Veh. Code §23157(a) <sup>3</sup>
CO	X	X	X <sup>2</sup>	X <sup>2</sup>	X <sup>2</sup>	X <sup>2</sup>	X <sup>2</sup>	X <sup>2</sup>	X	§42-4-1202(3)(c)
CT	X	X	X	X	X			X		§14-227b
DE	X	X	X	X	X			X	X	21 §§2740 & 2741
DC	X	X	X	X	X			X <sup>2</sup>	X <sup>2</sup>	§40-502(a) & (b)
FL <sup>4</sup>	X <sup>2</sup>	X <sup>2</sup>	X <sup>2</sup>	X <sup>2</sup>	X <sup>2</sup>		X <sup>2</sup>	X <sup>2</sup>	X	§316.1932(1)(a)
GA	X	X	X	X	X			X	X <sup>2</sup>	§40-3-55(a)
HI <sup>4</sup>	X		X	X			X		X <sup>11</sup>	§286-105
ID	X	X	X	X	X			X <sup>12</sup>	X <sup>20</sup>	§§18-8002A 18-8004
IL	X	X	X	X	X			X	X <sup>13</sup>	625 ILCS 5/11-501.1(a)

IMPLIED CONSENT LAW TABLE (continued)

State	Implied Consent Law Applies to DWT Alcohol and/or Drugs		Bodily Substances Tested				Who Selects Test?		More Than One Test Can Be Required*	Statutory Citations
	Alcohol	Drugs	Blood	Arrest	Urine	Saliva	Driver	Police		
IN	X	X	X	X	X	..		X	X	§9-30-6-2
IA	X	X	X	X	X			X	X	§321.6
KS	X	X	X	X	X	..		X	X	§8-1001(a)
KY	X	X	X	X	X			X	X	§189A.103(1)
LA*	X	X	X	X	X	..		X	X	§32:661
ME	X	X	X <sup>11</sup>	X <sup>11</sup>	X <sup>11</sup>			X <sup>11</sup>	X <sup>11</sup>	29 §1312
MD	X	X	X	X				X	X <sup>11</sup>	Trans. §16-205.1
MA*	X		X	X <sup>11</sup>				X <sup>11</sup>		90 §34(1)(f)
MI*	X	X	X	X	X			X <sup>11</sup>	X	§257.623
MN	X	X	X	X	X			X <sup>11</sup>	X <sup>11</sup>	§169.123, subd. 2
MS	X		..	X	..		N/A	N/A		§63-11-3
MO	X	X	X	X	X			X <sup>11</sup>	X	§577.020
MT	X		X	X	X			X		§61-8-402(1)
NB	X	X			X			X <sup>11</sup>	X	§39-669.06(1)
NV*	X	X			X	..		X <sup>11</sup>	X	§484.383.(1)
NH*	X	X			X			X	X	§265:84

## IMPLIED CONSENT LAW TABLE (continued)

State	Implied Consent Law Applies to DWI Alcohol and/or Drugs		Bodily Substances Tested				Who Selects Test?		More Than One Test Can Be Performed?	Statutory Citations
	Alcohol	Drugs	Blood	Breath	Urine	Saliva	Driver	Police		
NJ*	X	X		X			N/A	N/A		§39:4-50.2
NM	X	X	X	X				X	X	§66-8-407
NY	X	X	X	X	X	X		X	X	V&T Law §1194(Z)(a)
NC	X	X	X <sup>21</sup>	X	. <sup>21</sup>	. <sup>21</sup>		X <sup>21</sup>	X	§20-16.2(a)
ND	X	X	X	X	X	X		X	X	§39-20-01
OH	X	X	X	X	X			X	X	§4511.191(A)
OK	X	X	X <sup>22</sup>	X <sup>22</sup>	X <sup>22</sup>	X <sup>22</sup>		X <sup>22</sup>	X <sup>22</sup>	47 §751
OR*	X			X			N/A	N/A		§13.100
PA*	X	X	X	X	X			X <sup>23</sup>	X <sup>23</sup>	75 §1547
PR*	X		X	X		. <sup>24</sup>	X <sup>24</sup>		X <sup>24</sup>	9 §1043
RH	X	X	X	X	X			X	X	§31-27-2.1
SC*	X	X	X	X	X			X <sup>25</sup>	X	§56-5-2950(a)
SD	X	X	X	X				X <sup>27</sup>		§32-23-10
TH	X	X	X	X	X			X		§§55-10-405(5) & -406(a)(1)
TX	X	X	X	X	. <sup>28</sup>	. <sup>28</sup>		X <sup>28</sup>	X	Act. 67111-5, §§1 & 2(a)
UT	X	X	X	X	X			X	X <sup>29</sup>	§41-6-44.19(1)(a) & (b)

## IMPLIED CONSENT LAW TABLE (continued)

State	Implied Consent Law Applies to DWI Alcohol and/or Drugs		Bodily Substances Tested				Who Selects Test?		More Than One Test Can Be Required*	Summary Citations
	Alcohol	Drugs	Blood	Breath	Urine	Saliva	Driver	Police		
VT	X	X	X <sup>11</sup>	X				X	X	23 §1202(a)
VA	X	X	X	X			X <sup>12</sup>		X	§18.2-268
WA	X	X <sup>13</sup>	X <sup>14</sup>	X				X	X <sup>15</sup>	§46.20.302(1)
WV	X		X	X	X			X <sup>16</sup>	X	§17C-5-4
WI	X	X	X	X	X			X	X	§343.303(2) & (3)
WY <sup>17</sup>	X	X	X	X	X			X <sup>18</sup>	X	§31-6-102(a)
<b>TOTALS</b>	<b>52</b>	<b>45</b>	<b>48</b>	<b>52</b>	<b>37</b>	<b>4</b>	<b>4</b>	<b>12</b>	<b>13</b>	

N/A=Not Applicable

<sup>11</sup>The law of this State limits the types of drugs/substances that can be considered for the purposes of determining whether a person has been driving while under the influence. I.e., the law does not cover driving under the influence of all drugs/substances.

<sup>12</sup>State law provides that "other bodily substances" may be tested but such substances are not specifically identified.

<sup>13</sup>I.e., more than one type of bodily substance can be tested under the state's implied consent law.

<sup>14</sup>If the driver objects to a blood test, the officer shall designate one of the other tests.

<sup>15</sup>Controlled substances

<sup>16</sup>However, if the driver objects to a blood test, a breath or urine test may be used instead.

<sup>17</sup>Chemical testing of blood, breath or urine of alcohol concentration; chemical testing of blood or urine of drug concentration...

<sup>18</sup>For alcohol concentration, tests on blood or breath are to be performed;

for drug concentrations, tests on blood, urine or saliva are to be performed. If the test is for alcohol concentration, the driver may select either a blood or breath test. For drug driving offenses, the officer may request the person to submit to a particular type of test (blood or urine). *Stanger v. Colorado Dept. of Revenue*, 780 P.2d 64 (Colo. App. 1989)

<sup>19</sup>The law enforcement officer shall select which chemical test is to be administered. However, a person may object to a particular test on valid religious or medical grounds.

<sup>20</sup>The driver is required to submit to two (2) chemical tests of their blood, breath or urine for alcohol or drugs.

## IMPLIED CONSENT LAW TABLE (continued)

<sup>1</sup>A breath test can only be performed to determine alcohol concentration. A urine test must be used to determine whether other drugs were in a body (blood). A blood test can only be performed on a driver who has been injured when such test is a part of treatment at a medical facility.

<sup>2</sup>The law specifies the types of tests that are to be given in certain DWI situations.

<sup>3</sup>*McKorum v. State*, 371 S.E.2d 243 (Ga.App. 1988)

<sup>4</sup>The driver may elect to submit to both blood and breath tests.

<sup>5</sup>*Matter of Griffiths*, 744 P.2d 92 (Idaho 1987)

<sup>6</sup>*People v. Kyzcek*, 516 N.E.2d 783 (Ill.App. 2 Dist. 1987), and *People v. Rhoades*, 534 N.E.2d 1346 (Ill.App. 4 Dist. 1989)

Sec. 11-50 L.1(a) provides that "[a] urine test may be administered even after a blood or breath test or both has been administered."

<sup>7</sup>A breath test is administered unless it is unreasonable to give such test. However, a person has a "duty" to submit to either a blood or urine test to determine a category of drug in the person's system and the concentration of such drug, if a law enforcement officer has probable cause to believe that the person was under the influence of a specific category of drug.

<sup>8</sup>There are limits on when a blood test can be administered.

<sup>9</sup>There is an implication that the law enforcement officer selects the test.

<sup>10</sup>A person may give their consent to tests of either blood or urine for the purpose of determining if there are other impairing substances in the person's body.

<sup>11</sup>In addition to the statutory citation, see *Kiss v. King*, 491 S.W.2d 374 (Mo.App. 1985).

<sup>12</sup>See also §39-669.09.

<sup>13</sup>For the purpose of determining alcoholic content, a person may refuse a blood test if a breath test is reasonably available. For the purpose of determining controlled drug content, a person must submit to either a blood or urine test or both.

<sup>14</sup>A blood test is limited to persons who are unconscious or otherwise incapable of refusing a test. The officer may direct the administration of any other chemical analysis that may be effectively performed (120-16.2(a)).

<sup>15</sup>Test or tests of blood or breath for alcohol; test or tests of blood, urine or saliva for "intoxicating substances".

<sup>16</sup>*Barris v. Dept. of Public Safety*, 785 P.2d 332 (Okla.App. 1989) The law enforcement agency specifies the type of substance that is to be tested. *Drown v. City of Tulsa*, 837 P.2d 917 (Okla.Cr. 1992)

<sup>17</sup>*Morgan v. Conn.*, 522 A.2d 172 (Pa. Commw. 1987) In situations involving driving under the influence of alcohol, the driver must be given two (2) consecutive breath tests. In this is not done, the test results cannot be admitted into evidence at a DWI trial. *Conn. v. Dlatos*, 571 A.2d 418 (Pa.Super. 1990)

<sup>18</sup>*People v. Ortega Otero*, 97 P.R.R. 465 (1969).

<sup>19</sup>The law is not specific as to whether multiple tests can be administered.

<sup>20</sup>To determine alcohol concentration, the person must be offered a breath test first; a blood test may be requested if it is not reasonably possible to obtain a breath sample. To determine a drug concentration, the person must submit to a urine test.

<sup>21</sup>*State v. Koss*, 360 N.W.2d 523 (S.D. 1985), and *Baker v. State, Dept. of Public Safety*, 368 N.W.2d 492 (S.D. 1985)

<sup>22</sup>Art. 67011-S, §1 also provides that a person may consent to give a specimen of another substance for the purpose of determining alcohol concentration. However, they are only required to provide either a blood or breath specimen.

<sup>23</sup>*White v. State*, 713 S.W.2d 105 (Tex.App. - [14th Dist.] Houston 1986), & *State v. Gonzalez*, 859 S.W.2d 672 (Tex.App. - San Antonio 1993)

<sup>24</sup>*Nixon* in *Connors v. Schwandman*, 769 P.2d 280 (Utah App. 1989), the court held that law enforcement officers have the authority to request more than one breath test sample from a driver under the implied consent law.

## IMPLIED CONSENT LAW TABLE (continued)

<sup>11</sup>Under 23 Sec. 1202(a), if the law enforcement officer has "reasonable grounds" to believe that the driver was operating a motor vehicle while under the influence of drugs (controlled substances), the driver is deemed to have given consent to a blood test. See also *State v. Greenia*, 522 A.2d 242 (Vt. 1987) where the court held that there was no need to request a breath test prior to a blood test in situations where the driver has been charged with both driving under the influence of alcohol and drugs.

<sup>12</sup>Usually a person has the right to select the type of test. *Breedes v. Com.*, 421 S.E.2d 674 (Va.App. 1992) However, if such a test is not available, they must submit to the other test. *Mass v. Com.*, 425 S.E.2d 544 (Va. App. 1993)

<sup>13</sup>Normally, the tests are for alcohol only. However, if there has been an injury likely to cause death, a driver may be permitted to take a blood or breath test to determine the presence and/or concentrations of alcohol or drugs.

<sup>14</sup>In *Burger v. Dept. of Licensing*, 756 P.2d 153 (Wash.App. 1988), the court held that a refusal to submit to multiple testing could result in license revocation.

<sup>15</sup>If a person refuses to submit to a blood test, the officer shall select either a breath or a urine test.

<sup>16</sup>If the selected test is either blood or urine, the driver may select the other test. However, the officer may require a urine test if the driver is suspected of driving while under the influence of a controlled substance.

<sup>17</sup>Either breath or blood tests may be administered to determine alcohol concentration. Blood tests are administered to determine the content of controlled substances.

<sup>18</sup>*People v. Fitzhugh*, 279 Cal. Rptr. 682 (Cal.App. 4 Dist. 1991)

<sup>19</sup>If the first test is a breath test, the police officer can request a second test of either blood or urine (§18-4002(10)). However, the law is not clear on whether the officer can either (1) request a second breath test or (2) a blood (urine) if the first test was urine (blood). Also, the law is not clear on whether the officer can request a breath test after either a blood or urine test.

<sup>20</sup>The law enforcement officer selects the test. However, if a person refuses submit to a blood test, the officer must offer the person an alternative test. Likewise, if a person refuses to submit to a urine test, they must be offered an alternative test. The law does not specify the type or types of alternative test or tests. *Wintrow v. Commissioner of Public Safety*, 477 N.W.2d 539 (Minn.App. 1991)

STATE:

ARIZONA

General Reference:

Arizona Revised Statutes Annotated

Basis for a DWI Charge:

Standard DWI Offense: Under the influence of intoxicating liquor §28-692(A)(1)  
Illegal Per Se Law (BAC/BrAC Level): 0.10<sup>1&2</sup> and Any Controlled Substance in a Person's Body<sup>3</sup> §28-692(A)(2) & (3)  
Presumption (BAC Level): 0.10 §28-692(E)(3)  
Types of Drugs/Drugs and Alcohol: Under the influence of (1) Any Drug, a vapor releasing substance containing a toxic substance or (2) a combination of liquor, drugs or toxic vapor releasing substance if the person is impaired to the slightest degree. §28-692(4)(1)  
Other: For Commercial Motor Vehicle Operators, see p. 3-27.

Chemical Breath Tests for BAC/BrAC Level:

Preliminary Breath Test Law: Yes §28-691.01 (Based on reasonable suspicion of a DWI offense.)  
Implied Consent Law:  
Arrest Required (Yes/No): Yes §28-691(A)  
Implied Consent Law Applies to Drugs (Yes/No): Yes §28-691(A)  
Refusal to Submit to Chemical Test Admitted into Evidence: Yes (Criminal & Civil Cases) §28-692(I)  
Other Information: Special Note: Police officers may request persons (e.g. medical facility personnel), who collect blood, urine or other bodily substances from suspected DWI offenders, to supply samples of such substances to law enforcement authorities for testing; see §28-692(J). Such samples can also be obtained via search warrants; see §28-691(D).

Chemical Tests of Other Substances for BAC Level

Which Are Authorized Under the Implied Consent Law:

Blood: Yes §28-691  
Urine: Yes §28-691  
Other: "Other bodily substances" §28-691

<sup>1</sup>This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration level of 0.10 or more. §28-692(O)

<sup>2</sup>It is a Class 1 misdemeanor for any person under 21 years old to operate a motor vehicle with any "spirituous liquor" in their body. Jail-not more than 6 mos; fine-not more than \$2,500. See §§4-244(34), 4-246(B), 13-701, 13-707, 13-801 & 13-802.

<sup>3</sup>Except in cases where a person was impaired in the "slightest degree," a person is not guilty of this offense if they are legally entitled to use these drugs. §28-692(B)

STATE:  
General Reference:

CALIFORNIA  
West's Annotated California Codes

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of an alcoholic beverage Veh. Code §§23152 & 23153
Illegal Per Se Law (BAC/BrAC Level):	0.08 <sup>1&amp;2</sup> Veh. Code §§23152(b) and 23153(b)
Presumption (BAC Level):	0.08 Veh. Code §23155(3)
Types of Drugs/Alcohol and Drugs:	Under the influence of (1) Any Drug or (2) a Combination of Alcohol and Any Drug <sup>3</sup> Veh. Code §§23152 & 23153
Other:	For Commercial Motor Vehicle Operators, see p. 3-45. For bicycle riders, see the Special Note below.

Chemical Breath Tests For BAC/BrAC Level:

Preliminary Breath Test Law:	Yes Veh. Code §23157(h) (Note: A PBT may be conducted without legislative authority. A.G. Opinion 88-1102, Oct. 26, 1989)
Implied Consent Law:	
Arrest Required (Yes/No):	Yes Veh. Code §23157
Implied Consent Law Applies to Drugs (Yes/No):	Yes Veh. Code §23157(a)(1)
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes (Criminal & Civil Cases) Veh. Code §23157(a)(4)
Other Information:	A person, who has been arrested for a DWI offense, may be compelled to submit to a blood test for either alcohol concentration or the presence of drugs. See <i>Mercer v. Department of Motor Vehicles</i> , 809 P.2d 404 (Cal. 1991).

Chemical Tests of Other Substances for BAC Level

Which Are Authorized Under the Implied Consent Law:

Blood:	Yes Veh. Code §23157
Urine:	Yes Veh. Code §23157
Other:	None

<sup>1</sup>Special juvenile offense at 0.05 (Standard: Percent by weight of alcohol in the blood); see Veh. Code §23140(a).

<sup>2</sup>The regular standards for BAC and BrAC (respectively grams of alcohol per 100 milliliters of blood and grams of alcohol per 210 liters of breath) are used for the illegal per se offense.

<sup>3</sup>Note: It is illegal to be under the influence of certain "controlled substances" irrespective of whether the offender was operating a motor vehicle. Health and Safety Code §11350.

**Special Note:** Under Veh. Code §21200.5, it is illegal to ride a bicycle on the highways while under the influence of either alcohol or drugs. This section provides that a person committing this offense may be fined not more than \$250. This section further provides that a person under 21 years old, who commits this offense, is subject to license suspension under Veh. Code §13202.5; see the Special Note on p. 3-50 for details on this license suspension.

STATE:  
General Reference:

COLORADO  
Colorado Revised Statutes

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of alcohol/Impaired by the consumption of alcohol §42-4-1202(1)(a) & (b)
Illegal Per Se Law (BAC/BrAC Level):	0.10 <sup>1</sup> §42-4-1202(1.5)(a)
Presumption (BAC Level):	>0.05-Driving while impaired 0.10-Driving under the influence §42-4-1202(2)(b) & (c)
Types of Drugs/Drugs and Alcohol:	(1) Any Drug or (2) a Combination of Alcohol and Drugs <sup>2</sup> (applies to both driving under the influence and driving while impaired; §§42-4-1202(1)(a) & 42-4-1202(1)(b)
Other:	For Commercial Motor Vehicle Operators, see p. 3-63.

Chemical Breath Tests for BAC/BrAC Level:

Preliminary Breath Test Law:	Yes §42-4-1202(2.5)
Implied Consent Law:	
Arrest Required (Yes/No):	No Only probable cause is required; an actual arrest is not necessary. §42-4-1202(3)(a)(II) & III
Implied Consent Law Applies to Drugs (Yes/No):	Yes §42-4-1202(3)(a)(III)
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes (Criminal Cases) §42-4-1202(3)(e)
Other Information:	A person's blood may be taken from them by force if there is probable cause that they committed criminally negligent homicide with a motor vehicle, vehicle homicide, assault in the third degree with a motor vehicle or vehicle assault. §42-4-1202(3)(a)(IV)

Chemical Tests of Other Substances for BAC Level which Are Authorized Under the Implied Consent Law:

Blood:	Yes (Alc. & Drugs) §42-4-1202(3)(a)(II) & (III)
Urine:	Yes (For Drugs only) §42-4-1202(3)(a)(III)
Other:	Saliva (For Drugs only) §42-4-1202(3)(a)(III)

<sup>1</sup>This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration level of 0.10 or more.

<sup>2</sup>A "drug" is defined as either a substance, that is intended to cure or prevent disease, listed in the U.S. Pharmacopoeia, or a controlled substance; see §§12-27-303(7) & (13) and 42-4-1202(1)(d).

STATE:  
General Reference:

FLORIDA  
Florida Statutes Annotated

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of alcoholic beverages <sup>1</sup> §316.193(1)(a)
Illegal Per Se Law (BAC/BrAC Level):	0.10 <sup>1&amp;2</sup> §§316.193(1)(b) & 316.1932(b)1
Presumption (BAC Level):	None
Types of Drugs/Drugs and Alcohol:	Under the influence of a Controlled Substance/Chemical Substance listed in §877.111 §§316.193(1)(a) & 316.1931
Other	1) A BAC/BrAC level of 0.10 <sup>3</sup> is prima facie evidence of driving under the influence §316.1934(2)(c) 2) See the Special Note below. 3) For Commercial Motor Vehicle Operators, see p. 3-100. 4) A person arrested for a DWI offense cannot be released from custody until (1) they are no longer under the influence of alcohol or other chemical substance, (2) their BAC level is less than 0.05 or (3) eight (8) hrs have elapsed from the time of their arrest. §316.193(9)

<sup>1</sup>The offense of "driving under the influence" includes (1) driving under the influence of alcoholic beverages or (2) driving with a blood or breath level of 0.10 or more. See §316.193(1)(a) & (b) and State v. Rolle, 560 So.2d 1154 (Fla. 1990).

<sup>2</sup>This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration level of 0.10 or more. The standard definitions of BAC and BrAC are used; see §316.1932(b)1.

<sup>3</sup>Standard: Percent by weight of alcohol in either the blood or breath. §316.1934(2)(c)

**Special Note:** A jury instruction, that was based on a verbatim reading of §316.1934(2)(c), was held to be unconstitutional in that it created a mandatory "irrebuttable" presumption that shifted the burden of proof of the DWI offense to the defendant; see *Wilhelm v. State*, 568 So.2d 1 (Fla. 1990). Notwithstanding this case, the statutory language itself has been held constitutional in a prior decision; see *State v. Rolle*, 560 So.2d 1154 (Fla. 1990). Note: A Federal court has held in similar circumstances that there was no constitutional infirmity. However, the Federal court did express its concern that a jury could be confused with the term "prima facie". Despite this concern, the court felt that no unconstitutional mandatory presumption had been created when this instruction was viewed in conjunction with the other jury instructions that were given. See *Santiago Sanchez Defuentes v. Dugger*, 923 F.2d 801 (11th Cir. 1991).

Chemical Breath Tests for BAC/BrAC Level:

Preliminary Breath Test Law:	No
Implied Consent Law:	
Arrest Required (Yes/No):	Yes §316.1932(1)(a) Note: Under §316.1932(1)(c), an arrest is not a prerequisite to the taking of a blood sample if the driver is taken to a medical facility for treatment as a result of an accident. See <i>Kenson v. State</i> , 577 So.2d 694 (Fla.App. 3 Dist. 1991).
Implied Consent Law Applies to Drugs (Yes/No):	Yes §316.1932(1)(a) <sup>1</sup>
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes (Criminal Cases) §§316.1932(1)(a) & 316.1932(1)(b)
Other Information:	A blood test may be given a driver without their consent <u>only</u> if they have been involved in an accident resulting in either death or serious bodily injury. See §316.1933(1) and <i>Carbone v. State</i> , 564 So.2d 1253 (Fla.App. 4 Dist. 1990), and <i>State v. Perez</i> , 531 So.2d 961 (Fla. 1988).

Chemical Tests of Other Substances for BAC Level  
Which Are Authorized Under the Implied Consent Law:

Blood:	Yes-Limited A blood test, for the purposes of implied consent, may be taken only if the driver appears for treatment at a medical facility and the administration of a breath/urine test is impractical or impossible. §316.1932(1)(b)
Urine:	Yes-Limited Under §316.1932(1)(a), there is an implied consent to submit to a urine test for the purpose of detecting the presence of controlled substances.
Other:	None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	Yes Applies only to DWI manslaughter/veh homicide offs; see §316.656.
Anti-Plea Bargaining Statute (Yes/No):	Yes Only applies if BAC level is 0.20 or more or for DWI manslaughter/veh homicide offs; see §316.656.
Pre-Sentencing Investigation Law (PSI) (Yes/No):	Yes A person convicted of a DWI offense may be referred to substance abuse evaluation; see §316.193(5).

<sup>1</sup>The implied consent law, as applied to driving while under the influence of drugs, provides only for the testing of urine.

STATE:  
General Reference:

IDAHO  
General Laws of Idaho Annotated

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of alcohol §18-3004(1)(a)
Illegal Per Se Law (BAC/BrAC Level):	0.10 <sup>1</sup> §18-3004(1)(a)
Presumption (BAC Level):	None
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) Any Drug, (2) Intoxicating Substance or (3) a Combination of Any Drug and Alcohol §§18-3004(1)(a) & 18-3004(5)
Other:	For Commercial Motor Vehicle Operators, see below.

Chemical Breath Tests for BAC/BrAC Level:

Preliminary Breath Test Law:	No
Implied Consent Law:	
Arrest Required (Yes/No):	No <sup>2</sup>
Implied Consent Law Applies to Drugs (Yes/No):	Yes §18-8002(1)
Refusal to Submit Chemical Test Admitted into Evidence:	Yes (Criminal Cases) State v. Bock, 322 P.2d 1055 (1958)
Other Information:	Under §18-8002(6)(b), a law enforcement officer may order a "qualified person" to withdraw blood from a driver for evidential purposes in cases where there is probable cause to believe that such driver has committed either a DWI aggravated/homicide offense. Comment: This provision appears to allow law enforcement officers to obtain a blood sample via force.

<sup>1</sup>This State's illegal per se law also makes it an offense to operate a motor vehicle with either (1) a breath alcohol concentration level of 0.10 or more or (2) a urine alcohol concentration of 0.10 or more.

<sup>2</sup>The police need only "reasonable grounds" of a DWI off before the implied consent law is applicable; see §18-8002(1). However, §18-8002(4)(b) appears to indicate that "probable cause" is needed.

**DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL):** A person is "disqualified" from operating a CMV for 1 yr. (mand.) (2 yrs (mand.) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC/"Bodily Substance" level of 0.04 or more, (2) are under the influence of alcohol or a controlled substance or (3) refuse to submit to a chemical test for an alcohol concentration. For either (1) a subsequent violation or (2) a combination of two or more violations of any or the above listed items, the "disqualification" is for life (mand.). A person, who operates a CMV with an alcohol concentration of 0.04 or more or while under the influence of alcohol/drugs, is subject to DWI criminal sanctions. In addition, a CMV operator who has any "detectable" amount of alcohol in their system must be placed "out-of-service" for 24 hours. See §§49-105(6), 49-104(9), 49-335 (Reference is made to 49 CFR part 363.), 18-8002(3)(a), 18-3004(1)(b) & (5), 18-3004(4) and 18-8005(2) & (3).

Chemical Tests of Other Substances for BAC Level  
Which Are Authorized Under the Implied Consent Law:

Blood:	Yes	§§18-2002(1) & 18-2004
Urine:	Yes	§§18-2002(1) & 18-2004
Other:	None	

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	No
Anti-Plea Bargaining Statute (Yes/No):	No
Pre-Sentencing Investigation Law (PSI) (Yes/No):	Yes (Alcohol Evaluation) §18-2005(9)

Sanctions for Refusal to Submit to a  
Chemical Test:

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail):	N/A
Administrative Licensing Action (Susp/Rev):	N/A
Other:	N/A

Refusal to Take Implied Consent

Chemical Test:

Criminal Sanction (Fine/Jail):	No
Administrative Licensing Action (Susp/Rev):	1st Refusal-180 dys susp (mand); 2nd Refusal (w/n 5 yrs)-1 yr susp (mand) §18-2002(3)(c), (4)(b) & (4)(c)
Other:	None

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:	1st off Misd-Not more than 6 mos; 2nd off (w/n 5 yrs) Misd-10 dys to 1 yr; 3rd & sub off (w/n 5 yrs) or 4th or sub. off (w/n 10 yrs; Felony-Not more than 5 years Aggravated DWI where there is bodily harm/ disfigurement-Not more than 5 years See §§18-2005 & 18-2006.
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Mandatory Minimum Term:

	1st off Misd-None; 2nd off (w/n 5 yrs) Misd- 10 dys (must serve 48 con. hrs) <sup>1</sup> ; 3rd & sub off (w/n 5 yrs) or 4th or sub. off (w/n 10 yrs) Felony-30 dys <sup>1</sup> Aggravated DWI off where there is bodily harm/disfigurement-30 dys <sup>1</sup> See §§18-2005 & 18-2006.
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<sup>1</sup>Historical Note: Under Art. 3, §13 of the State's constitution, the legislature may provide for mandatory minimum sanctions. This constitutional provision indirectly abrogated the Idaho Supreme Court's decision in State v. McCoy, 486 P.2d 247 (Idaho 1971), that had voided a statute requiring mandatory sanctions.

STATE:  
General Reference:

ILLINOIS  
Smith/Hurd Illinois Annotated Statutes

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of alcohol Ch. 95%, 111-501(a)(2)
Illegal Per Se Law (BAC/BrAC Level):	0.10 <sup>1</sup> or Any Amount of Cannabis/Controlled Substance <sup>2</sup> Ch. 95%, 111-501(a)(1) & (5)
Presumption (BAC Level):	0.10 Ch. 95%, 111-501.2(b)(3) & 11-501.6(a)(2)
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) Any Drug or (2) a Combination of Any Drug and Alcohol See Ch. 95%, 111-501(a)(3) & (4).
Other:	For Commercial Motor Vehicle Operators, see p. 3-147.

Chemical Breath Tests for BAC/BrAC Level:

Preliminary Breath Test Law:	Yes-Limited <sup>3</sup> Ch. 95%, 111-501.5
Implied Consent Law:	
Arrest Required (Yes/No):	Yes Ch. 95%, 111-501.1 See the Special Note below.
Implied Consent Law Applies to Drugs (Yes/No):	Yes Ch. 95%, 111-501.1(a)
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes (Criminal Cases) See Ch. 95%. 111-501.2(c) & 11-501.6(f) and People v. Thomas, 558 N.E.2d 656 (Ill.App. 2 Dist. 1990). A BAC (blood test) test may be taken by force for a DWI offense (injury or non injury related) as long as the police have "probable cause" of such offense. See People v. Byrd, 574 N.E.2d 1269 (Ill.App. 4 Dist. 1991), and People v. Yant, 570 N.E.2d 3 (Ill.App. 2 Dist. 1991).
Other Information:	

<sup>1</sup>This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration level of 0.10 or more. Ch. 95%, 111-501.2(a)(5)

<sup>2</sup>As found in the blood or urine "resulting from unlawful use or consumption." 95%,  
111-501(a)(5)

<sup>3</sup>Before a PBT can be administered, a law enforcement officer must have probable cause to believe that the driver is violating the DWI law. The test is given prior to an actual DWI arrest for the purpose of assisting the officer in determining whether to require a chemical (evidentiary) test under the implied consent law.

**Historical Note:** Under Ch. 95%, 111-501.6(a), which is now void, a law enforcement officer could request that a person, via "implied consent", submit to a chemical test of their blood, breath or urine for alcohol or drug content based only on "probable cause" that the person was responsible for an accident that resulted in either an injury or a death. There was no requirement that there be "probable cause" of an offense (e.g. DWI). Because of this deficiency, the Illinois Supreme Court declared Ch. 95%, 111-501.6 unconstitutional under both the State and Federal constitutions. King v. Ryan, Secretary of State, \_\_\_ N.E.2d \_\_\_ (Ill. 1992) (1992 Ill. LEXIS 198) The sanctions for refusal to submit to this test were the same as for refusal under the regular implied consent law. Ch. 95%, 111-501.1 & 11-501.1

STATE - Illinois

Chemical Tests of Other Substances for BAC Level  
Which Are Authorized Under the Implied Consent Law:

Blood:	Yes Ch. 92%, 111-501.1
Urine:	Yes Ch. 95%, 111-501.1
Other:	None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	No
Anti-Plea Bargaining Statute (Yes/No):	No <sup>1</sup>
Pre-Sentencing Investigation Law (PSI) (Yes/No):	Yes Ch. 95%, 111-501(a)

Sanctions for Refusal to Submit to a  
Chemical Test:

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail):	None
Administrative Licensing Action (Susp/Rev):	None
Other:	None

Refusal to Take Implied Consent  
Chemical Test:

Criminal Sanction (Fine/Jail):	None
Administrative Licensing Action (Susp/Rev):	<u>1st refusal</u> -Susp for 6 mos (Note: A Judicial Driving Permit is available; see Footnote No. 2 (under Admin. per se) on p. 3-146 for details.) Also, restricted driving privileges are available under 95%, 116-206(c)(3): <u>subsequent refusals</u> <sup>2</sup> (w/n 5 yrs)-Susp for 2 yrs; 16 mos mandatory; a restricted license may be issued after this 6 month period.) See Footnote No. 4 on p. 3-146. Ch. 95%, 116-206(c)(3), 6-206.1, 6-208.1 and 11-501.1
Other:	None

Criminal Sanctions:

Imprisonment:	<u>1st &amp; 2nd offs</u> (Class A misd)-Less than 1 yr; <u>subsequent offs</u> <sup>3</sup> (Class 4 felony)-1-3 yrs Ch. 38, 111005-3-1(a)(7) & 1005-3-3(a)(1) and Ch. 95%, 111-501. See Footnote No. 2 on p. 3-146.
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<sup>1</sup>Note: A defendant cannot obtain deferred judgement and be placed on supervision if within the past 10 years they have either (1) been convicted of DWI, (2) pleaded guilty to or stipulated facts supporting the conviction of a DWI offense or (3) received supervision for a prior DWI off. Ch. 38, 111005-6-1(c) and 1005-6-1(d)

<sup>2</sup>0 a refusal where the person has had a previous DWI offense conviction or admin. per se violation (w/n 5 yrs). Ch. 95%, 111-500

<sup>3</sup>This offense is defined as "Aggravated Driving Under the Influence of Alcohol or Drugs or a Combination of Both". Ch. 95%, 111-501(d)

STATE:  
General Reference:

INDIANA  
Burn's Indiana Statutes Annotated

Basis for a DWI Charge:

Standard DWI Offense

Operating a vehicle while intoxicated  
IC9-30-5-2 (The term "intoxicated" is defined  
as under the influence of alcohol, drugs, etc.;  
see IC9-13-2-86.)

Illegal Per Se Law (BAC Level):

0.10<sup>1</sup> IC9-30-5-1(a) or Any Amount of a  
Controlled Substance<sup>2</sup> IC9-30-5-1(b)

Presumption (BAC Level):

0.10<sup>3</sup>

Types of Drugs, Drugs and Alcohol:

Under the influence of (1) Any Drug, (2) a  
Controlled Substance or (3) Any Combination of  
Alcohol and Drugs IC9-30-5-2 & IC9-13-2-86

Other:

0.10 BAC is also prima facie evidence of  
intoxication. IC9-13-2-131

See Footnote No. 4 concerning school bus  
operators.

For Commercial Motor Vehicle Operators, see p.  
3-156.

Chemical Breath Tests for BAC Level:

Preliminary Breath Test Law:

No (Note: PBT law, formally IC9-14.5-3,  
repealed by P.L. 143 enacted in 1983.)

Implied Consent Law:

Arrest Required (Yes/No):

No (A request for a test must be based on  
probable cause. However, an actual arrest is  
not required. See IC9-30-6-2 and Clark v.  
State, 372 N.E.2d 185 (Ind. 1978).)

Implied Consent Law Applies to

Drugs (Yes/No):

Yes IC9-30-6-2

Refusal to Submit to Chemical Test:

Admitted into Evidence:

Yes (Criminal & Civil Cases) IC9-30-6-3(b)

Other Information:

In accidents where there has been either a  
fatality or a serious injury, a blood sample may  
be obtained from a driver suspected of DWI via  
force. IC9-30-6-6(g)

<sup>1</sup>Standard: Percent by weight of alcohol in the blood. IC9-30-5-1(a)

<sup>2</sup>This State's illegal per se law also makes it an offense (Class C Misd) for a person to operate a  
motor vehicle with any amount of a controlled substance in their blood. Exception: It is a  
defense to this offense if it is shown that the defendant was using a controlled substance via  
a valid prescription. IC9-30-5-1(c)

<sup>3</sup>Under IC9-30-5-15(b)(2), a chemical test indicating a BAC level of 0.10 is to be taken as a  
presumption of such BAC level.

<sup>4</sup>It is a Class A Misd. to consume either alcohol or a controlled substance within six (6) hours  
of operating a school bus. IC20-9.1-3-1.6 Sanctions: Jail-not more than 1 yr; fine-not more  
than \$5,000. IC35-50-2-7 & IC35-50-3-1

STATE - Indiana

Chemical Tests of Other Substances for DAC Level  
Which Are Authorized Under the Implied Consent Law:

Blood:	Yes <sup>1</sup>
Urine:	Yes <sup>1</sup>
Other:	Any other bodily substance <sup>1</sup>

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	No
Anti-Plea Bargaining Statute (Yes/No):	No
Pre-Sentencing Investigation Law (PSI) (Yes/No):	No

Sanctions for Refusal to Submit to a  
Chemical Test:

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail):	N/A
Administrative Licensing Action (Susp/Rev):	N/A
Other:	N/A

Refusal to Take Implied Consent  
Chemical Test:

Criminal Sanction (Fine/Jail):	Yes-Limited <sup>2</sup>
Administrative Licensing Action (Susp/Rev):	1-yr susp <sup>2&amp;3</sup> (May not be mandatory if there is a DWI conviction. <sup>3</sup> ) IC9-30-6-9(a) See footnote No. 3 on p. 3-157. (Note: A driver's license may be reinstated if the DWI charges are dismissed. IC9-30-6-11(a)(1))
Other:	None

<sup>1</sup>The implied consent law requires a driver to submit one or more "chemical tests". The substances that may be tested are breath, blood, urine or any other bodily substance. IC9-30-6-1 & IC9-30-6-6(a)

<sup>2</sup>Refusal to submit to a implied consent test, where there has been an accident in which there has been a death or a serious bodily injury likely to cause death, is a class C Infraction (a fine of not more than \$500). IC9-30-7-5 & IC34-4-32-4(c) In addition, the court may suspend a persons license for not more than 1 yr. IC9-30-7-5

<sup>3</sup>This susp. is consecutive to any susp. for a DWI offense. However, if a court finds in the sentence order for a DWI Conviction that it is in the best interest of society, it may terminate all or any part of this suspension. IC9-30-5-14(b)

STATE:  
General References:

NEBRASKA  
Revised Statutes of Nebraska and  
Nebraska Administrative Code (NAC)

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of alcoholic liquor §39-669.07(1)(a)
Illegal Per Se Law (BAC/BrAC Level): Presumption (BAC Level):	0.10 <sup>1</sup> §39-669.07(1)(b) & (c) None
Types of Drugs/Drugs and Alcohol:	Under the influence of Any Drug §39-669.07(1)(d)
Other:	For Commercial Motor Vehicle Operators, see o. 3-257.

Chemical Breath Tests for BAC/BrAC Level:

Preliminary Breath Test Law:	Yes §39-669.08(3)
Implied Consent Law:	
Arrest Required (Yes/No):	Yes §39-669.08(2)
Implied Consent Law Applies to Drugs (Yes/No):	Yes §39-669.08(1)
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes §39-669.08(9) (Criminal Cases) and State v. Romell, 204 N.W.2d 573 (1973)
Other Information:	A driver, who has been involved in an accident and where there is reasonable grounds that the driver is DWI, may be required to submit to a chemical test to determine if they have either alcohol or drugs in their system. Injury or death is not a prerequisite for this requirement. §39-669.08(2)

Chemical Tests of Other Substances for BAC Level  
Which Are Authorized Under the Implied Consent Law:

Blood:	Yes §39-669.08(1)
Urine:	Yes §39-669.08(1)
Other:	None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	No <sup>2</sup>
Anti-Plea Bargaining Statute (Yes/No):	No
Pre-Sentencing Investigation Law (PSI) (Yes/No):	Yes <sup>4</sup> Alcohol assessment (screening) for either a 1st offender or a sub. offender who has not received such an assessment. §39-669.07(6)

<sup>1</sup>This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration level of 0.10 or more. Note: illegal per se based on alcohol concentration in urine was repealed. Sec. 4 of L.B. 291 enacted in 1992

<sup>2</sup>A surviving driver (or pedestrian under 16 years old), who is involved in an accident where there has been a fatality, shall be required to submit to a SAC chemical test. The results of such test, however, can only be used for statistical purposes. §§39-6.104.08 & 39-6.104.09

<sup>3</sup>Note: Under §29-3604, pretrial diversion of DWI cases is prohibited.

<sup>4</sup>"A court may order a presentence investigation in any case." §29-2251(2) & (3)

Sanctions for Refusal to Submit to a  
Chemical Test:

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail):	Class V misd \$100 fine, no imprisonment §§28-106 & 39-669.08(3)
Administrative Licensing Action (Susp/Rev):	None
Other:	None

Refusal to Take Implied Consent

Chemical Test:

Criminal Sanction (Fine/Jail):	C1 W misd: <u>1st off</u> -Not more than \$500/60 dys; <u>2nd off</u> (w/n 8 yrs)-Not more than \$500/90 dys; <u>3rd off</u> (w/n 8 yrs)-Not more than \$500/1 yr; <u>4th or sub. off</u> (w/n 8 yrs)-Not more than \$10,000/5 yrs §§28-106 & 39-669.08
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Mandatory Sanctions:

I. If probation is not granted: 1st off-\$200/7  
dys<sup>1</sup>; 2nd off (w/n 8 yrs)-\$500/30 dys<sup>1</sup>; 3rd off  
(w/n 8 yrs)-\$500/90 dys<sup>1</sup>; 4th or sub. off (w/n 8  
yrs)-\$500/1 yr<sup>1</sup> §§28-106 and 39-669.08(4)(b) &  
(c)

II. If probation is granted: 1st off-None; 2nd  
off (w/n 8 yrs)-48 hrs<sup>1</sup>; 3rd or sub. off (w/n 8  
yrs)-7 dys<sup>1</sup> §§28-106 and 39-669.08(4)(b) & (c)  
See the Comment on p. 3-285.

Administrative Licensing Action  
(Susp/Rev):

I. The following revocations are mandatory if  
probation is not granted:<sup>3</sup> 1st off-Rev 6 mos;  
2nd off-Rev 1 yr; 3rd and sub. off-Rev 15 yrs<sup>2</sup>  
§§28-106 & 39-669.08

II. If probation is granted, the following  
mandatory revocations must be imposed:<sup>3</sup> 1st  
off-Rev 60 dys; 2nd off-Rev 6 mos; 3rd and sub.  
off-Rev 1 yr §§28-106 & 39-669.08

III. Administrative action<sup>4</sup>: 1st and sub.  
refusals-Rev. 1 yr (mand) §39-669.16 & 247 IAC  
§026

Other:

None

<sup>1</sup>The period of imprisonment, it appears, must be served consecutively. State v. Texel, 433 N.W.2d 541 (Neb. 1989)

<sup>2</sup>Reduced to 5 yrs provided the person (1) has completed a chemical dependency program, (2) has not been convicted of either a DWI or implied consent offense, (3) has abstained from the excessive consumption of alcoholic beverages and (4) is not under suspension or revocation for any other reason. Sec. 10 of L.B. 291 enacted in 1992

<sup>3</sup>These revocations are based upon a conviction under §39-669.08. Special Note: Revocations cannot run concurrently with jail sanctions.

<sup>4</sup>This action by the licensing agency is independent of any licensing action that may be taken by the courts. A person, who is subject to this administrative action, is not eligible for employment (hardship) driving privileges under §60-4,130.

STATE:

NEVADA

General Reference:

Nevada Revised Statutes

Basis for a DWI Charge:

Standard DWI Offense:

Under the influence of intoxicating liquor  
§484.372(1)(a)

Illegal Per Se Law (BAC/BrAC Level):

0.10<sup>1&2</sup> §§484.0135 & 484.379(1)(b)

Presumption (BAC/BrAC Level):

0.10 §484.381(2)(c) & (4)(c)

Types of Drugs/Drugs and Alcohol:

Under the influence of (1) A Controlled Substance, (2) a Combination of Intoxicating Liquor and a Controlled Substance or (3) Any Chemical, Poison, Organic Solvent and Any Compound or a Combination of These. §484.377-21

Other:

For Commercial Motor Vehicle Operators, see below.

Chemical Breath Tests for BAC/BrAC Level:

Preliminary Breath Test Law:

Yes §484.382

Implied Consent Law:

Arrest Required (Yes/No):

No<sup>2</sup> §484.383(1)

Implied Consent Law Applied to

Drugs (Yes/No):

Yes §484.383(1)

Refusal to Submit to Chemical Test

Admitted into Evidence:

Yes (Criminal Cases) §484.389

This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration level of 0.10 or more. §484.0135

Special Note: Sec. 484.381(1) provides for a presumption related to illegal per se. This provision states that if the chemical test indicates a BAC level of 0.10 or more such result shall be "presumed to be no less than the amount present at the time of the alleged violation." A Federal appellate court has held that this statutory provision does not create an unconstitutional mandatory conclusive presumption on its "face". However, a State trial court applied this presumption as if it were a mandatory conclusive presumption. Such application was held to be unconstitutional. *McLean v. Moran*, 963 F.2d 1306 (9th Cir. 1992)

<sup>3</sup>Only "reasonable grounds" are needed not an actual arrest.

**DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL):** The State's Public Service Commission and Department of Motor Vehicles and Public Safety have promulgate regulations that adopt by reference 49 CFR Parts 383 and 392. Under 49 CFR §383.21 a person is "disqualified" from operating a CMV for 1 yr. (mand.) (3 yrs (mand.) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC level of 0.04 or more, (2) are under the influence of alcohol or a controlled substance or (3) refuse to submit to a chemical test for an alcohol concentration. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (mand.). Under 49 CFR §392.5, a CMV operator who has an "detectable" amount of alcohol in their system must be placed "out-of-service" for 24 hours. In addition, it is misdemeanor to violate a regulation. The sanctions for this offense are a jail term of not more than 6 mos and/or a fine of at least \$100 (mand.) but not more than \$1,000. Note: A person, who violates a regulation, may also be liable for a civil penalty which is not to exceed \$10,000. See §§483.908, 706.173, 706.756 & 706.771, NAC §706.247 and 49 USC Appx §2901 et seq.

Chemical Breath Tests for BAC/BrAC Level:  
(continued)

Other Information:

Note: A BAC chemical test via a blood sample may be given without consent if (1) there was a death or substantial bodily harm to another person or (2) the driver to be tested was convicted of a previous DWI offense w/n 7 yrs. See §484.383(3) & (8) and Ebarb v. State, Dept. of Motor Vehicles and Public Safety, 822 P.2d 1120 (Nev. 1991).

Chemical Tests of Other Substances for BAC Level  
Which Are Authorized Under the Implied Consent Law:

Blood:	Yes §484.383(1)
Urine:	Yes §484.383(1) <sup>1</sup>
Other:	Or other unspecified bodily substances §484.383(1)

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	No
Anti-Plea Bargaining Statute (Yes/No):	Yes (Note: A DWI charge cannot be exchanged for a lesser charge unless there is no evidence to support such a DWI charge. §484.3792(3))
Pre-Sentencing Investigation Law (PSI) (Yes/No):	Yes For a 3rd DWI and felony offs §§176.135, 484.3792(1)(c) & 484.3796 Special Note: For 1st offenders, a teacher of an (alc.) education course must evaluate the DWI offender to determine if such offender is an abuser of alcohol or drugs. The finding of this evaluation must be reported to the court. §484.3792(1)(a)(3)

Sanctions for Refusal to Submit to a  
Chemical Test:

Refusal to Take a <u>Preliminary Breath Test:</u>	
Criminal Sanctions (Fine/Jail):	None
Administrative Licensing Action (Susp/Rev):	Rev-90 dys §484.384(3)
Other:	None

<sup>1</sup>A urine test can only be requested under two conditions. (1) A driver has been arrested for an alcohol driving offense and it is determined that they have hemophilia or a heart condition which would exempt them from a blood test or (2) a driver has been arrested for a drug driving offense. §484.383(4), (6) & (7)

STATE:  
General Reference:

NEW JERSEY  
New Jersey Statutes Annotated

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of intoxicating liquor §39:4-50(a) See the Special Note below.
Illegal Per Se Law (BAC Level):	0.10 <sup>1,2,3</sup> §39:4-50(a) <u>Under 21 Years Old</u> -0.01 but less than 0.10 <sup>1</sup> §39:4-50.14
Presumption (BAC Level):	None
Types of Drugs/Drugs and Alcohols:	Under the influence of (1) A Narcotic (2) A Hallucinogenic Drug or (3) A Habit-Producing Drug §39:4-50(a)
Other:	For Comm. Motor Vehicle Operators, see p. 3-316

Chemical Breath Tests for BAC Level:

Preliminary Breath Test Law:	No
Implied Consent Law:	
Arrest Required (Yes/No):	Probably Yes Under §39:4-50.2(a), a driver's license can only be revoked when the refusal is based on an arrest. However, see §39:4-50.2(a) where only "reasonable grounds" seems to be required.
Drugs (Yes/No):	No
Refusal to Submit to Chemical Test:	
Admitted into Evidence:	Yes (Criminal Cases) State v. Stever, 307 A.2d 408 (N.J. 1967)
Other Information:	(1) An "involuntary" blood (not breath) sample may be obtained from a person who has been arrested for a DWI offense; i.e., a blood sample may be taken by "force". State v. Dyri, 473 A.2d 390 (N.J. 1984), and State v. Hooper, 483 A.2d 627 (N.J. Super. A.D. 1984) (2) Tests for alcohol shall be made on automobile drivers who survive traffic accidents fatal to others. §25:28-24 and State v. Figueroa, 515 A.2d 242 (N.J. Super. A.D. 1986), certif. den. 516 A.2d 204

<sup>1</sup>Standard: Percent by weight of alcohol in the blood. §39:4-50(a)

<sup>2</sup>In State v. Downie, 569 A.2d 242 (N.J. 1990), the N.J. Supreme Court held that breathalyzer results must be given "judicial notice". The court felt that this was in keeping with the legislature's policy of measuring alcohol in the brain for the purpose of determining whether a person was DWI. **Comment:** The practical end result of this decision was to in effect create a "judicial" illegal per se law based on BrAC; see the dissenting opinion.

<sup>3</sup>See State v. Lentini, 573 A.2d 464 (N.J. Super. A.D. 1990).

**Special Note:** Under separate statutory provisions, it is illegal for a person to drive a motor vehicle while under the influence of intoxicating liquor, any narcotic or any habit forming drug (1) on "vehicle crossings" (bridges and tunnels) operated by the Port of New York Authority, (2) on any "project" of the New Jersey Expressway Authority or (3) on any "project" of the New Jersey Turnpike Authority. §§27:12C-37(8), 27:12C-37J, 27:23-25, 29:23-32, 32:1-154.3, 32:1-154.9 & 32:1-154.10 It is illegal to operate a motorized bicycle while under the influence of intoxicating liquor, any narcotic or any habit forming drug. §39:4-14.3g The law provides that a violation of these provisions results in the same sanctions as for violating the regular DWI law. §39:4-50

<sup>4</sup>The only sanctions for this offense are community service and forfeiture of driving privileges.

Chemical Tests for Other Substances for BAC Level  
Which Are Authorized Under the Implied Consent Law:

Blood:	No
Urine:	No
Other:	None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	No
Anti-Plea Bargaining Statute (Yes/No):	No
Pre-Sentencing Investigation Law.(PSI) (Yes/No):	Yes (Alcohol screening) §39:4-50(b)

Sanctions for Refusal to Submit to a  
Chemical Test:

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail):	N/A
Administrative Licensing Action (Susp/Rev):	N/A
Other:	N/A

Refusal to Take Implied Consent

Chemical test:

Criminal Sanction (Fine/Jail):	Fine-\$250 to \$500 §39:4-50.4a
Administrative Licensing Action (Susp/Rev):	<u>1st Refusal-Rev-6 mos (Mand); 2nd or sub refusal-Rev 2 yrs (Mand) §§39:4-50.2 &amp; 39:4-50.4a</u>
Other:	None

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	See the Special Note below.
Imprisonment: Term (Day, Month, Years, Etc.):	<u>1st off-Not more than 30 dys; 2nd off (w/n 10 yrs of a first off)-48 cons hrs-90 dys; 3rd and subsequent offs (w/n 10 yrs of a second off)-Not less than 180 dys §39:4-50</u>
Mandatory Minimum Term:	<u>1st off-(See Rehabilitation on p. 3-316.); 2nd off-48 cons hrs (See Rehabilitation on p. 3-316.); 3rd and subsequent offs-90 dys (See Rehabilitation on p. 3-316.)</u>

<sup>1</sup>The law provides that the court may substitute no more than 90 of the 180 jail term for community service on a day-for-day basis. Consequently, a 3rd or subsequent DWI offender would still be subject to a mandatory jail term of at least 90 dys. §39:4-50(a)(3) and State v. Laurick, 575 A.2d 1340 (N.J. 1990)

Special Note: In State v. Hamm, 577 A.2d 1259 (N.J. 1990), the New Jersey Supreme Court noted that a DWI offense is not a "crime".

STATE:  
General Reference:

OKLAHOMA  
Oklahoma Statutes Annotated

Basis for a DWI Charge:

Standard DWI Offense:	(1) Under the influence of alcohol and (2) Impaired by the consumption of alcohol 47 §§756(A) & 11-202(A)(2)
Illegal Per Se Law (BAC/BrAC Level):	0.10 47 §§756(d) & 11-202(A)(1)
Presumption (BAC Level):	None
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) Intoxicating Substances or (2) a Combination of These and Alcohol 47 §11-202(A)(3) & (4)
Other:	0.10 BAC level is also <u>prima facie</u> evidence that a person has under the influence of alcohol 47 §756(d) >0.05 and <0.10 is evidence of Driving While Impaired 47 §756(b) For Commercial Motor Vehicle Operators, see below.

Chemical Breath Tests for BAC/BrAC Level:

Preliminary Breath Test Law:	No
Implied Consent Law:	
Arrest Required (Yes/No):	Yes 47 §757(A)
Implied Consent Law Applies to Drugs (Yes/No):	Yes 47 §757(A)
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes (Criminal Cases) 47 §756
Other Information:	Note: (1) Under 47 §753, a mandatory chemical test may be ordered in situations where there is probable cause that a person has been operating a motor vehicle while DWI and such operation has caused either death or serious physical injury to another person. (2) Also, under 47 §10-104(B), a mandatory chemical for alcohol/drugs may be ordered in traffic accident situations where the driver (person to be tested) has been cited for a traffic offense.

This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration level of 0.10 or more.

The impaired offense applies only to the use of alcohol (not other drugs). The sanctions given for driving while under the influence includes both alcohol and drug driving violations.

DWI Offenses and Commercial Motor Vehicle (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for not less than 1 yr. (1 yr. mand.) (not less than 3 yrs (3 yrs mand.) if transporting hazardous materials), if while operating a CMV they (1) have a BAC/BrAC level of 0.04 or more, (2) are under the influence of alcohol or an intoxicating substance or (2) refuse to submit to a chemical test for an alcohol concentration. For either (1) a second "conviction" or (2) a combination of two "convictions" of any of the above listed items, the "disqualification" is for life (10 yrs mand.). See 47 §6-205.2.

Chemical Tests of Other Substances for BAC Level  
Which Are Authorized Under the Implied Consent Law:

Blood:	Yes (for alcohol and intoxicating substances) 47 §751(A)
Urine:	Yes (for intoxicating substances only) 47 §751(A)
Other:	Saliva (for intoxicating substances only) 47 §751(A)

Adjudication of OWI Charges:

Mandatory Adjudication Law (Yes/No):	No
Anti-Plea Bargaining Statute (Yes/No):	No
Pre-Sentencing Investigation Law (PSI) (Yes/No):	Yes (2nd and subsequent offs) 22 §982

Sanctions for Refusal to Submit to a  
Chemical Test:

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail):	N/A
Administrative Licensing Action (Susp/Rev):	N/A
Other:	N/A

Refusal to Take Implied Consent

Chemical Test:

Criminal Sanction (Fine/Jail):	None
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Administrative Licensing Action (Susp/Rev):
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1st Refusal-Rev-180 dys (90 dys mandatory)<sup>1</sup>; 2nd Refusal (w/n 5 yrs)-Rev.-1 yr (mandatory); Sub. Refusal (w/n 5 yrs)-Rev.-3 yrs (mandatory) 47 §§ 6-205.1, 6-211(i), 753, 754.1 & 755  
See Footnote No. 2 on p. 3-374.

Other:	None
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Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

Term (Day, Month, Years,  
Etc.):

Driving While Under the Influence/Illegal Per Se  
1st Off (Misd)-10 dys to 1 yr; 2nd & subsequent offs (w/n 10 yrs-felony)-1 yr to 5 yrs 47 §11-902 Personal Injury Accident (Driving While Under the Influence/Illegal Per Se)-1st Off (Misd)-90 dys to 1 yr; 2nd Off (felony)-1 to 5 yrs 47 §11-904(A) Great Bodily Harm (Driving While Under the Influence/Illegal Per Se) (felony)-not more than 5 yrs 47 §904(B)

<sup>1</sup>A restricted hardship license is available after the mandatory 90 day period.

STATE:  
General Reference:

SOUTH DAKOTA  
South Dakota Codified Laws

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of an alcoholic beverage §32-23-1(2)
Illegal Per Se Law (BAC Level):	0.10 <sup>1</sup> §32-23-1(1)
Presumption (BAC Level):	0.10 <sup>1</sup> §32-23-7 (Note: §32-23-7 applies this presumption to the ven homicide off.)
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) Any Substance, (2) Any Controlled Drug, (3) Marijuana or (4) a Combination of These Substances and an Alcoholic Beverage §32-23-1(3) & (4)
Other:	For Commercial Motor Vehicle Operators, see s. 3-431.

Chemical Breath Tests for BAC Level:

Preliminary Breath Test Law:	Yes §32-23-1.2
Implied Consent Law:	
Arrest Required (Yes/No):	Yes §32-23-10
Implied Consent Law Applies to Drugs (Yes/No):	Yes §32-23-10
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes §§19-13-23.1 & 32-23-10.1 <sup>2</sup> (Criminal Cases)
Other Information:	Chemical test required for persons who have been arrested for a third or subsequent DWI offense which constitutes a felony. "Force" may be used to obtain a blood sample. §32-23-10, State v. Heinrich, 449 N.W.2d 25 (S.D. 1991), State v. Lanier, 452 N.W.2d 144 (S.D. 1990), and State v. Sickler, 428 N.W.2d 70 (S.D. 1992).

Chemical Tests of Other Substances for BAC Level  
Which Are Authorized Under the Implied Consent Law:

Blood:	Yes §32-23-10
Urine:	No §32-23-10
Other:	"Other bodily substances" §32-23-10

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	No
Anti-Plea Bargaining Statute (Yes/No):	No (Note: An illegal per se charge may be reduced or dismissed <u>only</u> when written reasons for such have been filed with the court. §32-23-1.3)

<sup>1</sup>Based on percent by weight of alcohol in the blood. However, under §32-23-7, there is a provision that "[p]ercent by weight of alcohol in the blood shall be based upon milligrams of alcohol per 1.0 cubic centimeters of whole blood or 2100 cubic centimeters of deep lung breath."

<sup>2</sup>This statute was held constitutional in South Dakota v. Neville, 459 U.S. 553 (1981).

Adjudication of DWI Charges: (continued)

Pre-Sentencing Investigation Law (PSI)  
(Yes/No):

Yes Limited If the defendant's BAC level is 0.17 or more, the court must require them to undergo an evaluation to determine if they are addicted to alcohol. §32-33-23 Note: The courts have general authority to order discretionary pre-sentence investigation reports. §23A-27-5

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail): None  
Administrative Licensing Action (Susp/Rev): None  
Other: None

Refusal to Take Implied Consent

Chemical Test:

Criminal Sanction (Fine/Jail): None  
Administrative Licensing Action (Susp/Rev): Rev 1 yr<sup>1</sup> (A restricted hardship license is available.) §32-23-11  
Other: None

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

Term (Day, Month, Years, Etc.):

1st off C1 1 Misd-1 yr (county jail); 2nd off (w/n 5 yrs) C1 1 Misd-1 yr (county jail); 3rd off C1 6 Felony (w/n 5 yrs)-Not more than 2 yrs (State penitentiary); 4th & sub. off (w/n 5 yrs) C1 5 Felony-Not more than 5 yrs (State penitentiary) §522-6-1, 22-6-2, 32-23-2, 32-23-3, 32-23-4 & 32-23-4.1

Mandatory Minimum Term:

None

Fine:

Amount (\$ Range):

1st off-\$1,000; 2nd off (w/n 5 yrs)-\$1,000; 3rd off (w/n 5 yrs)-\$2,000; 4th & sub. off (w/n 5 yrs)-Not more than \$5,000

Mandatory Min. Fine (\$):

None

<sup>1</sup>Under §32-23-11.1, a driver's license is not subject to revocation for refusal to submit to a chemical test under the implied consent law if either (1) the driver pleads guilty to a DWI offense or (2) the DWI charge is dismissed prior a hearing on the refusal and the person is not convicted of a lesser charge or, if a hearing is not requested, prior to the revocation being ordered.

STATE:  
General Reference:

UTAH  
Utah Code Annotated

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of alcohol §41-6-44(1)(a)
Illegal Per Se Law (BAC/BrAC Level):	0.08 <sup>1</sup> §41-6-44(1)(a) & (2)
Presumption (BAC Level):	None
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) Any Drug or (2) a Combination of Any Drug and Alcohol §41-6-44(1)(a)
Other:	For Commercial Motor Vehicle Operators, see p. 3-461.

Chemical Breath Tests for BAC/BrAC Level:

Preliminary Breath Test Law:	No
Implied Consent Law:	
Arrest Required (Yes/No):	Yes §41-6-44.10(2)
Implied Consent Law Applies to Drugs (Yes/No):	Yes §41-6-44.10(1)
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes (Criminal and Civil Cases) §41-6-44.10(3)
Other Information:	A driver may be compelled to submit to a chemical test if they have been placed under arrest either (1) for a DWI offense and there is reason to believe that another person may die as a result of the offense or (2) for a vehicle homicide alcohol related offense. §76-5-207(6)(b) & (7)(a)

Chemical Tests of Other Substances for BAC Level Which Are Authorized Under the Implied Consent Law:

Blood:	Yes §41-6-44.10
Urine:	Yes §41-6-44.10
Other:	None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	No (Note: A Magistrate may not grant diversion in a DWI case. §77-2-9)
Anti-Plea Bargaining Statute (Yes/No):	No (Note: If the defendant pleads guilty or <u>nolo contendere</u> to reckless driving as a substitute for a DWI charge, the prosecution must state for the record whether alcohol or drugs were related to the pleaded off. §41-6-44(10))
Pre-Sentencing Investigation Law (PSI) (Yes/No):	Yes §41-6-44(4) & (5) (Assessment)

<sup>1</sup>This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration level of 0.08 or more.

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail):	N/A
Administrative Licensing Action (Susp/Rev):	N/A
Other:	N/A

Refusal to Take Implied Consent

Chemical Test:

Criminal Sanction (Fine/Jail):	None
Administrative Licensing Action (Susp/Rev):	Rev for 1 yr <sup>1</sup> Mandatory §41-6-44.10(2)(b) (Note: No hardship license may be issued for revs based on a test refusal. §41-2-19(d))
Other:	None

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

Term (Day, Month, Years, Etc.):

1st off and 2nd off (w/n 5 yrs)-Class B misd. - not more than 6 mos; 3rd & sub off (w/n 6 yrs) if one or more of the previous offs occurred prior to 4/23/90-Class B misd. - not more than 6 mos; 3rd off (w/n 6 yrs) if two of the previous offs occurred after 4/23/90-Class A misd. - not more than 1 yr; 4th & sub off (w/n 6 yrs) if the three previous offs occurred after 4/23/90-3rd Degree felony - not more than 5 yrs  
A DWI off-where there is an injury related to negligent action-Class A misd.- not more than 1 yr §§41-6-44(3)(a), 76-3-203(3) & 76-3-204  
1st off-48 cons hrs; 2nd off (w/n 5 yrs)-240 cons hrs; subsequent off<sup>2</sup> (w/n 6 yrs)-720 hrs  
DWI related injury off-48 cons hrs

Mandatory Minimum Term:

<sup>1</sup>This sanction also applies to persons under 21 years old who refuse to submit to a chemical test to determine if they have violated §41-6-44.4(1). This section provides for administrative (licensing) actions against such persons who drive a vehicle with any amount of alcohol in their body.

<sup>2</sup>This mandatory sanction (i.e., jail or community service alternative) may not apply to 3rd offenses (w/n 6 yrs) if two of the previous offs occurred after 4/23/90 and to 4th & sub offenses (w/n 6 yrs) if the three previous offs occurred after 4/23/90. The law provides that for these offenses "[e]nrollment in and completion of a chemical dependency rehabilitation program approved by the court may be a sentencing alternative to incarceration or community service if the program provides intensive care or inpatient treatment and long-term closely supervised follow through after the treatment." §41-6-44(6)(c)(II) & (7)(c)

STATE:  
General Reference:

WASHINGTON  
Revised Code of Washington Annotated

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of or affected by intoxicating liquor §§46.61.502(3) & 46.61.504(3)
Illegal Per Se Law (BAC/BrAC Level):	0.10 <sup>1</sup> §§46.61.502(1) & (2) and 46.61.504(1) & (2)
Presumption (BAC Level):	None
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) Any Drug or (2) a Combination of Intoxicating Liquor and Any Drug §§46.61.502(3) & (4) and 46.61.504(3) & (4)
Other:	For Commercial Motor Vehicle Operators, see p. 3-496.

Chemical Breath Tests for BAC/BrAC Level:

Preliminary Breath Test Law:	No
Implied Consent Law:	
Arrest Required (Yes/No):	Yes §46-20-308
Implied Consent Law Applies to Drugs (Yes/No):	No <sup>3</sup>
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes (Criminal Cases) §46.61.517 <sup>2</sup>
Other Information:	Special Note: A person may be administered either a breath or blood test without their consent, if they have been arrested for either (1) vehicle homicide, (2) vehicle assault or (3) DWI where there has been an injury related accident which may result in death. §46.20.308 <sup>3</sup> & State v. Schulze, 204 P.2d 566 (Wash. 1991)

Chemical Tests of Other Substances for BAC Level Which Are Authorized Under the Implied Consent Law:

Blood:	Yes
Urine:	No
Other:	None

<sup>1</sup>This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration level of 0.10 or more.

<sup>2</sup>See State v. Zwicker, 713 P.2d 1101 (Wash. 1986), which limited such evidence to situations where the defendant initially raises the issue of a blood alcohol test by contesting the credibility or competence of police procedures.

<sup>3</sup>Under §46.20.308(3), if there is an injury likely to cause death, a person may be compelled to submit to a test for drugs as well as for alcohol.

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	No <sup>1</sup>
Anti-Plea Bargaining Statute (Yes/No):	No <sup>1</sup>
Pre-Sentencing Investigation Law (PSI) (Yes/No):	Yes Permissive authorization, but not mandatory; see §46.61.515.

Sanctions for Refusal to Submit to a  
Chemical Test:

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail):	N/A
Administrative Licensing Action (Susp/Rev):	N/A
Other:	N/A

Refusal to Take Implied Consent

Chemical Test:

Criminal Sanction (Fine/Jail):	None
Administrative Licensing Action (Susp/Rev):	<u>1st refusal</u> -Rev for 1 yr (Mandatory); <u>2nd refusal</u> (w/n 5 yrs) Rev for 2 yrs (Mandatory) §§46.20.308 and 46.20.311(2)
Other:	None

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

Term (Day, Month, Years,  
Etc.):

1st off - 24 hrs - 1 yr; 2nd and Subsequent off  
(w/n 5 yrs) - 7 dys - 1 yr; 2nd and Subsequent  
off but offender has no license or because their  
license was either suspended or revoked - 90 dys  
- 1 yr Veh Assault (Drunk driving related  
injury C1 C felony) - Not more than 5 yrs  
§§9A.20.021(1)(c), 46.61.502, .504, .515, .522  
See Miscellaneous Sanctions on p. 3-496.

Mandatory Minimum Term:

1st off - 24 cons hrs<sup>1&2</sup>; 2nd and Subsequent  
offs (w/n 5 yrs) - 7 dys<sup>2&3</sup>; 2nd and Subsequent  
off but offender has no license or because their  
license was either suspended or revoked - 90  
dys See Miscellaneous Sanctions on p. 3-496.

<sup>1</sup>The State has a deferred prosecution program for DWI offenses. A person is eligible for this program only once in every five (5) years. The program provides for alcohol treatment for a two year period. Upon successful completion of the program, The court shall dismiss the charges pending against the defendant. §10.05.010 et seq.

<sup>2</sup>May be suspended only if jail would impose a risk to defendant's physical or mental well-being.

<sup>3</sup>With 48 con. hrs. §46.61.515(1)

**Special Note:** The Washington Supreme Court has held that DWI offenses are not felonies. State v. Elgin, 825 P.2d 314 (Wash. 1992)

# GOVERNOR HICKEL'S DWI LAWS (SB 279 & HB 445)

Governor Hickel has introduced legislation to remove the impaired driver from the Alaska's highways. The main objective of this legislation is to provide "implied consent" for, and administration of, chemical tests to detect the presence of drugs in drivers of motor vehicles or commercial motor vehicles involved in accidents that cause death or serious physical injury.

Impaired driving, and crashes related to it account for more than half of all traffic deaths in Alaska and is among the nation's leading problems. Despite a rising tide of public indignation, the wide variety of drugs, their use in combination with alcohol or other drugs, and their availability combine to produce a major public safety problem to Alaska's highways.

The Governor's legislation amends the implied consent statutes to specify that a person who operates a motor vehicle or commercial motor vehicle in this state is considered to have given consent to submit to a chemical test or tests of the person's blood and urine for the purpose of determining the presence of both alcohol and drugs if the person is involved in an accident that causes death or serious physical injury to another person, even if the person is not under arrest. The tests may be administered at the direction of a law enforcement officer who has reasonable grounds to believe that the person was operating a motor vehicle or commercial vehicle that was involved in an accident that caused death or serious physical injury to another person.

The penalty for refusal to submit to a chemical test under the provision of the legislation is a Class A misdemeanor and will result in revocation of the driver's license, privilege to drive, or privilege to obtain a license, in addition to other criminal penalties. If a person has been notified of the penalties that will result from refusal to submit to a chemical test, and the person refuses to submit, the chemical test may not be given unless the person has been arrested and the arrest resulted from an accident that causes death or serious physical injury to another person.

Driving is a privilege granted by the state that can be conditioned upon consent to reasonable terms. This legislation will provide law enforcement and prosecutors with the tools they need to combat the significant highway safety problems presented by those drivers who use drugs and then cause fatal or serious injury accidents.

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER

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February 16, 1994

DRUGS IN SERIOUS INJURY AND FATAL ACCIDENTS

FACT SHEET

1. Very few studies have been conducted of drug use by drivers involved in crashes. What limited data is available has focused on limited geographic areas and special driver populations such as young males.
2. In 1988, the National Highway Transportation Administration synthesized existing research in a report to Congress and found that drugs were present in 10-22 percent of crash involved drivers.
3. Los Angeles Police Department personnel estimate that 20 percent of persons arrested for impaired driving were under the influence of drugs. In addition, when drugs were found in either crash involved or arrested drivers, they were found most often in combination with alcohol.
4. Urine is generally the best specimen to screen for the presence of a drug, but blood is necessary if you wish to know the degree of influence of the drug as well as possible dose and time of administration.
5. If you want to know if a suspect was under the influence of a drug at the time of committing an offense, a blood and urine sample should be collected as close to the time of the offense as possible.
6. In one study blood specimens were obtained from nearly 2,000 fatally injured drivers from seven states. Drugs other than alcohol were present in approximately 18 percent of these drivers.
7. A second recent study which was a far more comprehensive which focused on fatally injured drivers who died within four hours of the crash. Blood specimens were collected from a sample of 1,882 fatally injured drivers from 13 sampling sites, encompassing three entire states (Massachusetts, North Carolina, and Wisconsin), and selected counties in California, Nevada, Texas and Virginia. The results of the tests are as follows:
  - a. Alcohol was found in 52 percent of fatalities.

- c. 64 percent of drug cases also had alcohol.
  - d. A drug was detected without alcohol in 6.3 percent of fatalities.
  - e. Abuse drugs (e.g., marijuana, cocaine) were found most frequently in the 25-54 age group.
  - f. Marijuana and cocaine were found more frequently in urban crashes than in rural ones.
  - g. Prescription drugs were found most frequently in the over 55 age group.
  - h. Drugs were found mostly in males.
  - i. Regional difference: Amphetamines were found nearly exclusively in California; Marijuana/cocaine were unusually prevalent in Dallas, TX; and Wisconsin had the lowest abuse drug involvement.
8. With a urine sample, the lab is able to screen for a wide range of all types of controlled substances in detail very cheaply. Then the lab is able to go back after identifying the controlled substance in the urine and quantify the amount through the blood test. If blood alone is submitted it is a very cumbersome, slow expensive process to attempt to identify multiple substances or in essence screen the blood.
9. The following substances are usually checked during a routine urine screen.
- A. Stimulants
    - 1. Amphetamines
    - 2. methamphetamine
    - 3. "MDA"
    - 4. Dexedrine
  - B. Depressants
    - 1. Barbiturates
    - 2. Seconal
    - 3. Nembutal
  - C. Tranquilizers
    - 1. Valium
    - 2. Librium
  - D. Opiates
    - 1. Morphine
    - 2. Percodan
    - 3. Heroin
    - 4. Dilaudid
  - E. Antidepressants
    - 1. Elavil

F. Marijuana

G. Cocaine

H. LSD

*Lorn M. Campbell*

Lorn M. Campbell (Name of Submitter)

HSPA (Agency)

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Richard L. Burton  
Commissioner

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Mandatory Drug/Alcohol Testing  
Discussion Paper

"A bill to provide for implied consent for, and administration of, chemical test to detect the presence of drugs in drivers of motor vehicles or commercial vehicles that are involved in accidents that cause death or serious physical injury to another person".

This proposed legislation gives law enforcement officers additional tools they need to combat the significant highway safety challenge presented by those drivers who use drugs and then cause fatal or serious injury accidents.

Discussion:

Much deserved attention has been focused on drunk driving, while the related dangers presented by individuals driving under the influence of drugs other than alcohol or taken in conjunction with alcohol or other drugs have had little attention. One of the reasons for the lack of attention has been a lack of legislation allowing for the taking of blood and urine samples in those cases where drug use may be suspected.

The impact of intentional or unintentional drug abuse on motor vehicle operation in our highly mobile society is enormous as there currently are obtainable over 20,000 prescription drugs; 100,000 over-the-counter drugs; 500 illicit drugs; and 200 herbal drugs.

Drug use has become prevalent in our society. An estimated twenty-three million people are marijuana users, at least five million people use cocaine, and even a greater number use psychoactive prescription and over-the-counter medication.

There are unique subcategories of drivers whose apparent drug use patterns differ from those of the general driving population. For example, commercial truck drivers exhibit a substantially lower alcohol-involvement crash rate than do passenger vehicle drivers. In 1985, five percent of the drivers of heavy trucks involved in fatal crashes had been drinking whereas thirty-four percent of the drivers of passenger vehicles involved in fatal crashes had consumed alcohol. However, truck drivers were found to have been more apt to use stimulants.

The National Transportation Safety Board (NTSB) released a study in October 1988 revealing that at least 26 accidents of 189 heavy truck accidents from 1985 to 1987 conclusively involved drug or alcohol abuse. In one case, the driver of a heavy truck struck the rear of a queue of four other heavy trucks; the driver had not slept in the previous forty-four hours and had consumed alcohol, amphetamines, and cocaine in an attempt to stay awake.

Another unique subgroup appears to be young male drivers. An often-cited study (Compton, A Report to Congress 1988) of drug incidence among fatally injured young male drivers in California found higher rates of drug use in general and marijuana and cocaine use in particular than among the general population. One or more drugs were detected in 81 percent of 440 male drivers aged 15 to 34 killed in vehicle crashes, whereas two or more drugs were detected in 43 percent. In addition, drugs other than alcohol rarely were detected alone; the drugs usually were found in combination with alcohol and generally the BAC levels were 0.10 percent or higher. The use of drugs among young drivers is thought to present a greater risk than among the general population since youths are beginning to experiment with drugs and are inexperienced at driving.

The wide variety of drugs, their use in combination with alcohol or other drugs, and their availability combine to produce a major public safety problem to the nation's highways.

It is the consensus of the Highway Safety Planning Agency that passage of this legislation will provide law enforcement with an additional tool in which to remove the impaired driver from the state's highways.

Lorn M. Campbell  
Lorn M. Campbell  
Executive Director  
Alaska Highway Safety Planning Agency

02/08/94  
Date

GENERAL ASSEMBLY OF MARYLAND  
REPORT OF THE  
TASK FORCE ON DRUNK  
AND  
DRUGGED DRIVING



1988 WINTER

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December 1, 1988

The Honorable Thomas V. Mike Miller, Jr., Co-Chairman  
The Honorable R. Clayton Mitchell, Co-Chairman  
Members of the Legislative Policy Committee

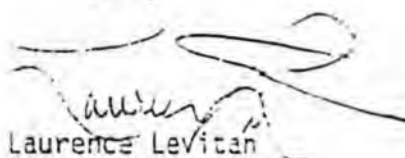
Ladies and Gentlemen:

On behalf of the Task Force on Drunk and Drugged Driving, we are pleased to submit our report to you.

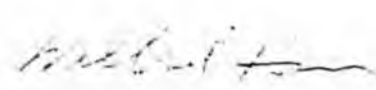
Since its appointment, the Task Force has met regularly. We wish to acknowledge the support of the individuals who attended and testified at the meetings and provided the Task Force with the benefit of their research, opinions, and suggestions.

The responsibility of the Task Force is serious and we hope the Task Force will continue to function in the 1989 Interim.

Respectfully submitted,



Laurence Levitan  
Co-Chairman



William S. Horne  
Co-Chairman

/slb

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## INTRODUCTION

In recent years, the problems associated with drunk and drugged drivers have increasingly become the focus of attention from both concerned citizens and government officials. The reason for this attention can be found in the statistics that quantify the tragic waste of human life and public resources at the hands of drunk and drugged drivers. In Maryland alone, alcohol has been identified as a contributing factor in the highway deaths of 2,684 people since 1981 (See Appendix 1 - "Relevant Statistics", for information on highway fatalities in which alcohol was a contributing factor and other pertinent statistics).

Beginning in 1981, the General Assembly of Maryland dramatically increased efforts to curb the drinking driver. During the period of 1981 through 1988, the General Assembly enacted over 30 laws to counteract the problems associated with individuals who drink and drive. These legislative measures include increased criminal and administrative penalties, prohibitions of specific behavior associated with drunk driving, enhanced driver education and rehabilitation programs, provision of additional enforcement tools to law enforcement and judicial personnel, and improved enforcement and treatment of juvenile offenders.

The statistics show that these efforts have met with considerable success. For example, there has generally been an increase since 1981 in the number of alcohol-related driving arrests and convictions. Even more

importantly, the percentage of highway fatalities in which alcohol was a contributing factor markedly decreased in the past few years. In 1981, alcohol was a contributing factor in 500 fatalities, 63% of the total highway fatalities. In 1987, these figures dropped to 309 fatalities, 37% of the total. Preliminary figures for 1988 are comparable with the 1987 figures (See Appendix 1).

In 1988, recognizing that the goal of removing the impaired driver from the highways had not been fully realized, the General Assembly passed House Joint Resolution 53\* establishing a Task Force on Drunk and Drugged Driving. The Task Force is composed of legislators, judges, law enforcement officials, a State's Attorney, the Administrator of the Motor Vehicle Administration ("MVA"), and other knowledgeable and concerned representatives of the public and private sectors.

The Task Force met regularly during the 1988 Interim and considered a wide range of issues including the establishment of new offenses and harsher penalties, testing for alcohol and drugs, treatment of juvenile offenders, and other impaired driver issues.

What follows is the Task Force's Report on Drunk and Drugged Driving including recommendations to the General Assembly.

---

\* Signed and designated Joint Resolution No. 15 by Governor William Donald Schaefer, May 27, 1988.

Shock Trauma Study

One of the major problems investigated by the Task Force was the issue of drugged driving. To assist the Task Force in its investigation, Dr. Carl Soderstrom, a surgical staff member of the Maryland Shock Trauma Center of the Maryland Institute for Emergency Medical Services Systems briefed the Task Force on the results of a recent study of 1,023 patients, victims of both venicular and nonvenicular trauma.

Dr. Soderstrom stated that the radioimmune serum test (i.e., a type of blood test) used in the study reliably indicates use of marijuana and other cannabinoids ("THC") within a period of 3 to 4 hours before the test is performed. On the other hand, Dr. Soderstrom stated that a urine test is not useful for determining the specific time period of drug use.

According to Dr. Soderstrom the results of the study indicated for all drivers:

- 1) 15% tested positive for THC alone;
- 2) 19% tested positive for alcohol alone; and
- 3) 17% tested positive for both THC and alcohol.

Dr. Soderstrom indicated that, although various drugs were detected in patients, prescription drugs and over-the-counter drugs were not revealed as a major problem. In addition to marijuana and other cannabinoids, Dr.

Soderstrom found that 7% of drivers tested positive for PCP, cocaine, methaqualone, or methadone alone or in combination with another drug.

Enforcement

Section 21-902(c) of the Transportation Article prohibits an individual from driving or attempting to drive while so far under the influence of any drug, any combination drugs, or a combination of one or more drugs and alcohol that the individual cannot drive a vehicle safely. Section 21-902(d) prohibits an individual from driving or attempting to drive "while under the influence of any controlled dangerous substance...if the person is not entitled to use the controlled dangerous substance under the laws of this State." Based on the prevalence of both legal and illegal drug use in our society, it is clear that arrests for these charges are underrepresented. Table A below shows the number of citations received in the District Court on these drug-related driving offenses and the guilty dispositions for drug-related driving offenses, and the total number of all §21-902 (a), (b), (c), and (d) drug-and alcohol-related driving arrests and guilty dispositions.

	TABLE A Drug-And Alcohol-Related Driving Offenses		
	TA §21-902(c)	TA §21-902(d)	All TA §21-902 (does not reflect Circuit Ct. info.)
FY 1986			
Citations Received	352	414	33,302
Guilty Dispositions	77	45	10,843
FY 1987			
Citations Received	682	589	36,832
Guilty Dispositions	74	43	10,286
FY 1988			
Citations Received	739	620	42,367
Guilty Dispositions	103	58	11,217

The need for greater prosecution of the current laws against drugged driving resulted in study by the Task Force of additional enforcement techniques and tools.

#### Drug Evaluation and Classification Training

Mr. William E. Scott, Director, Office of Alcohol and State Programs, Traffic Safety Programs, NHTSA, testified before the Task Force on the topic of drug evaluation and classification training for police officers. Mr. Scott stated that very few police officers are trained to recognize the symptoms of impairment by drugs other than alcohol. Mr. Scott recommended to the Task Force a program, developed by the Los Angeles Police Department (LAPD), which enables a police officer to systematically administer a battery of physical and physiological tests to determine:

- 1) Whether a driver is impaired;
- 2) If so, whether the impairment is drug-related or medically-related (i.e., illness or injury); and
- 3) If drug-related, the broad category of drugs likely to have caused the impairment.

Sgt. William Tower of the Maryland State Police also briefed the Task Force on this topic. Sgt. Tower's extensive qualifications for discussing this subject include aiding the U.S. Department of Transportation in the development of a program to train police officers in drug testing and

participating in the program sponsored by the LAPD. According to Sgt. Tower, 20% of drivers who are charged and tested for blood alcohol content have symptoms more serious than the BAC test indicates. Sgt. Tower stated that an individual trained under the LAPD program has a 90% success rate in determining the type of drug an individual had used.

The LAPD program has two stages. The first stage trains the officer to conduct standardized field sobriety tests on an individual to determine whether the individual is under the influence of drugs. This first stage includes a 1 day course on how to recognize the basic signs of drug impairment. The second stage is an intensive 7 day course on how to identify the clinical signs of drug impairment followed by 2-3 weeks of hands-on experience with people under the influence of drugs.

According to Sgt. Tower, several hundred of Maryland's police officers have completed the field sobriety training. He stated that he would conduct the 1 day course to complete the first stage of the training in mid-December.

#### Drug Testing

A major law enforcement tool that the Task Force studied was medical testing of suspected drugged drivers. Current law authorizes breath or blood tests for alcohol. House Bill 822 of 1988, "Vehicle Laws - Tests for Alcohol Concentration and Drug Content", would have authorized drug tests

for driver but received unfavorable action during the 1988 Session of the General Assembly. However, the House Judiciary Committee requested that the issue be studied in detail by the Task Force.

Mr. Scott of NHTSA and other individuals who testified before the Task Force endorsed the concept of drug testing for a driver who has been detained by a police officer having reasonable grounds to believe that the driver is under the influence of a drug. Approximately 32 states allow testing of a driver to determine the presence of drugs. In essence, the drug testing proposal contained in House Bill 822 of 1988 would:

- 1) Expand the current implied consent statute to include consent to test for drugs other than alcohol; and
- 2) Allow testing of specimens of urine and "other bodily fluids".

In addition, House Bill 822 of 1988 would:

- 1) Change the definition of "qualified medical individual" (used to determine who is authorized to withdraw blood for testing) to include any individual authorized by an agency designated by the Secretary of Health and Mental Hygiene;
- 2) Increase the number of days (from 20 to 30) before trial that the State is required to notify the defendant or the defendant's attorney of the State's intention to introduce test results as

evidence without the presence or testimony of the technician who administered the test and to deliver a copy of the test results;

- 3) Increase the number of days (from 10 to 20) before trial that a defendant is required to notify the court and the State if the defendant desires the technician who performed the test to be present and testify;
- 4) Provide that, if the case is transferred to a circuit court from the District Court, the State is not required to file a second notice;
- 5) If the case is transferred to a circuit court from the District Court, require the defendant to notify the court and the State at least 20 days before trial that the defendant desires the technician to be present and testify at trial;
- 6) If a postponement is granted in the District Court or a circuit court, require the defendant to notify the court in writing at least 20 days before trial that the defendant desires the technician to be present and testify at trial;
- 7) Add manslaughter by automobile, motorboat, locomotive, etc., and any violation of an alcohol restriction on a driver's license to those offenses for which a test of alcohol or other drugs is admissible in evidence.

Dr. Yale Caplan, State Toxicologist, testified on some of the issues contained in House Bill 822 of 1968. Dr. Caplan suggested specifying what drugs should be the subject of testing. According to Dr. Caplan, testing should be concentrated on marijuana and other cannabinoids, cocaine, phencyclidine (PCP), opiates, and amphetamines. Dr. Caplan also stated that the implied consent law would need to be amended to allow testing for the presence of drugs and testing of specimens other than blood or breath (e.g., urine and other bodily fluids).

Dr. Caplan also stated that a drug testing entity, that does not currently exist, would be necessary to perform drug testing. Dr. Caplan stated that neither the Maryland State Police nor the Office of the Chief Medical Examiner within the Department of Health and Mental Hygiene has the resources of office space, personnel, and equipment to perform drug testing.

Dr. Caplan estimated that approximately 1,000 tests would be performed in the first year of testing, 2,000 to 3,000 in the second year, and multiple thousands in the third and subsequent years. Dr. Caplan also predicted that court appearances and testimony may be required of testing personnel in a large number of these cases. Dr. Caplan also estimated a fiscal impact of \$1 to \$2 million to establish the testing laboratory.

In response to questions on the drug testing issue, Dr. Caplan stated that there are no specific levels for drug content in the body that can be legislatively established as is currently done with blood alcohol content.

Dr. Caplan suggested that limiting testing to detect the presence of the illegal drugs to which he referred would obviate the need to establish specific levels of drug content in the body for a multitude of legal and illegal drugs. Dr. Caplan also viewed the use of the drug test result as confirmatory evidence, that would be introduced at trial in addition to drug evaluation and classification testimony by the arresting police officer, rather than establishing presumptive levels of intoxication or under the influence.

In response to questions regarding what type of test indicates recent use of a drug, Dr. Caplan stated that a blood test offers a greater interpretive value than a urine test in determining the time period of drug use. Dr. Caplan noted also that a blood test may be obtained only by qualified medical personnel. In responding to further questions regarding the greater expense of conducting blood tests, Dr. Caplan agreed that the current arrangement under which the State pays for the BAC tests for both the State and the counties may be the subject of a budgetary controversy as the number of tests and their costs increase.

Peter C. Cobb, Executive Assistant for Public Safety, Office of the Governor, and a member of the Task Force, indicated that the Governor will not budget funds for drug testing for drivers until at least fiscal year 1990 unless legislation authorizing drug testing is enacted first. Mr. Cobb also indicated a preference for allowing the executive branch to determine programatically by regulation the specific drugs for which testing would be conducted.

The staff of the Task Force also provided the members with copies of the case of Franklin v. State, 8 Md. App. 134 (1969), which held that evidence that an individual had a drug within his biological system tends to show possession and/or control prior to taking the drug and that evidence, together with the individual's statement to a physician, is sufficient to sustain a conviction for the crime of possession of a controlled dangerous substance.

#### Commercial Motor Carrier Regulations

The federal commercial motor carrier regulations (see discussion on p. 17) reviewed by Mr. Rickert of the MVA also address drugged driving by commercial drivers. As with the alcohol-related driving offenses, for a first offense of driving under the influence of drugs, there would be a 1 year suspension from driving a commercial motor vehicle. For a second offense, there would be a lifetime disqualification.

#### Medical Advisory Board

The Task Force also received testimony from William Bricker, former Administrator of the MVA and an attorney in private practice. Mr. Bricker suggested to the Task Force that anyone who was convicted or granted probation before judgment for any drug-related offense (e.g., possession of a controlled dangerous substance) should be referred to the MVA Medical Advisory Board to determine whether the individual is fit to drive.

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## DRUG IMPAIRED DRIVING

### RESOLUTION 93-14 (new)

*WHEREAS, people who operate motor vehicles while under the influence of alcohol have long been known to cause thousands of crashes, injuries and deaths each year, but only recently has the magnitude of the problems caused by drug (other than alcohol) impaired drivers come to light; and*

*WHEREAS, a NHTSA report to Congress disclosed a frequency of drug use by fatally injured drivers is between 10-15 percent; and*

*WHEREAS, many studies have documented this finding, pointing to a national prevalence of drug impaired driving; and*

*WHEREAS, NHTSA has developed a standardized curriculum for training police officers as Drug Recognition Experts (DRE);*

*NOW THEREFORE BE IT RESOLVED, that NAGHSR encourages states to adopt legislation which makes it illegal to operate a motor vehicle while impaired by drugs other than alcohol or in combination with alcohol; and*

*BE IT FURTHER RESOLVED, that states allow the chemical test sample to be analyzed to determine the presence and/or concentration of drugs other than alcohol.*

*Submitted by: Impaired Driving Committee*

NATIONAL SAFETY COUNCIL

POLICY STATEMENT

COMMITTEE ON ALCOHOL AND OTHER DRUGS

ENFORCEMENT OF LAWS AIMED AT ALCOHOL-IMPAIRED DRIVING

There is strong scientific consensus suggesting that the public's perception of effective enforcement appears to be a strong deterrent to alcohol impaired driving. In order to enhance the effectiveness of enforcement activities in preventing impaired driving, the National Safety Council recommends that jurisdictions:

Implement new enforcement programs requiring chemical tests of body substance samples for all drivers involved in nighttime crashes.

Consider the use of new technologies such as passive alcohol sensors and motor vehicle ignition interlocks.

Develop and use highly visible and widely publicized enforcement approaches that increase the public's perception of the risk of apprehension.

Passed by the Committee on Alcohol and Other Drugs, November 4, 1992.

**RECENT ACTIVITIES OF THE INTERNATIONAL ASSOCIATION FOR  
CHEMICAL TESTING**

**A Report to the National Safety Council Committee on Alcohol and Other  
Drugs**

**October 6, 1993**

**Chicago, IL**

prepared by Patrick Harding, IACT liaison to the CAOD

Mr. Chairman,

The International Association for Chemical Testing continues to grow in membership. In keeping with the pledges of our two organizations to keep each other informed of activities, members of the COAD have been placed on our mailing list to receive the IACT Newsletter. Additionally, the minutes of COAD meetings are summarized and published in the Newsletter for the benefit of IACT members.

The following report is a summary of the some of IACT's recent activities:

**RESOLUTIONS**

**"Mandatory Alcohol/Drug Testing of All Drivers in Fatal and Serious Injury Crashes"**

Whereas, alcohol and other drug involvement is a major factor in fatal and serious traffic crashes, and

Whereas, the best method for confirming alcohol and other drug involvement in drivers is to obtain an alcohol/drug test, and

Whereas, currently only 73 percent of fatally injured drivers and 25 percent of surviving drivers in fatal crashes are tested for alcohol in the United States, and

Whereas, drug testing of fatally injured drivers and surviving drivers in fatal and serious injury crashes is not routinely done, and

Whereas, it is important for the scientific community to be able to accurately determine alcohol and other drug involvement in all fatal and serious injury traffic crashes in order to develop and evaluate intervention measures; be it therefore

**RESOLVED** that the International Association for Chemical Testing urges all jurisdictions to pass and actively implement laws requiring alcohol/drug testing of all drivers involved in fatal and serious injury producing crashes. Such laws, if implemented, would allow year to year tracking of alcohol and other drug involvement in all fatal and serious injury producing crashes in order to evaluate the effectiveness of alcohol/drug countermeasures. Further, such laws would allow and authorize law enforcement agencies to identify alcohol and other drug impaired drivers involved in fatal and serious injury crashes who heretofore have gone undetected

Adopted March 26, 1993