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Cost-Benefit Analysis of Administrative License Suspensions

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| 16. Abstract <p>This report summarizes a study of the costs and benefits associated with the implementation of laws calling for the administrative suspension of driver licenses for driving while intoxicated (DWI). Such laws generally call for speedy license suspension or revocation for person arrested for DWI who are at illegal breath alcohol concentrations.</p> <p>The experience of three states was studied. They were Nevada, Mississippi and Illinois. Costs associated with implementation of administrative suspension or revocation laws were identified as well as additional revenues to the states attributable to the law in the form of license reinstatement fees. Transfer payments from the Federal Government for which the states qualified through implementation of administrative revocation for DWI were also identified as were societal benefits as indicated by reduced crash costs.</p> <p>In each state license reinstatement fees more than offset costs associated with implementing the law and reductions in crash costs were well over 100 times the cost of implementation.</p> <p>The major study recommendation is that other states give serious consideration to administrative license suspension for DWI.</p> | | | | | |
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EXECUTIVE SUMMARY

This report presents the results of a research project funded by the National Highway Traffic Safety Administration (NHTSA) entitled "Cost Benefit Analysis of Administrative License Suspensions" (DTNH22-88-C-07310). The project was conducted by Mid-America Research Institute and the University of North Carolina Highway Safety Research Center. The purpose of this project was to examine the costs of implementing laws calling for administrative license suspensions for driving while intoxicated (DWI) offenders and to compare those costs with benefits obtained both in terms of direct fiscal consequences such as license reinstatement fees as well as with societal benefits as reflected by reduced crash costs. The experiences of three states with such a law, Nevada, Mississippi and Illinois, were examined.

Administrative license suspension laws, or administrative *per se* laws, are laws which call for an administrative suspension or revocation of the driver's license of persons arrested for driving while intoxicated (DWI) or driving under the influence (DUI) who submit to a chemical test of their blood or breath alcohol concentration and have a resulting BAC at or above the legal limit (.10 in most U.S. states). Studies have indicated that such laws are effective not only in deterring the general public from driving while impaired, because of the threat of almost certain punishment if arrested (general deterrence), but also in reducing recidivism of those arrested through receiving license suspensions (specific deterrence).

Administrative license revocation laws generally work in the following manner. At the time of arrest, the offender submits to a chemical test. If the results indicate that the offender is above the legally permissible level, the arresting officer confiscates the driver's license and gives the offender a receipt which serves as a temporary license (usually for 30 days) until a formal suspension goes into effect (often of 90 days duration). During the 30 day interim period, the offender may appeal the suspension. If an offender refuses to submit to a chemical test, the normal implied consent refusal statute goes into effect, triggering an administrative revocation for failure to submit to a test. In the ideal case, the implied consent refusal license penalty would be longer than that for failing the test, to encourage offenders to submit to the test. If the offender submits to the test and the results indicate a level lower than the legal limit, no administrative license sanction is implemented. The basic criminal DWI charge is handled separately through the courts in the traditional manner.

Though at the time of this report over half of the states had adopted some form of administrative *per se* law for DWI, many of the remaining states were reluctant to do so, largely because of concerns about the costs of implementing such a law. The purpose of this study was to identify the costs associated with implementing an administrative *per se* law and identify any additional revenues and

societal benefits which may accrue as a result of the adoption and implementation of such a law and to compare those costs and benefits.

Three states were selected for study, representing a range of state sizes and geographic locations as well as a variety of approaches to administrative license removal for DWI. Nevada was selected as a small, western state which provides hearings of appeals through the division of motor vehicles hearings process. Mississippi was selected as a mid-sized, southeastern state where the imposition of the administrative suspension takes place automatically after 30 days, unless the results of the court trial of the DWI offense indicate that the offender was not guilty. This serves as an incentive for arrestees to reach disposition of their criminal cases. Illinois was selected as a large mid-western state where the hearings of appeals are handled as a separate item within the regular traffic court system.

Contacts were made with motor vehicles administrators, courts, police and custodians of crash data in each of the jurisdictions and costs associated with implementing and operating administrative *per se* in each of the jurisdictions were identified. Additionally, revenues associated with license reinstatement fees and other assessments associated with the administrative suspensions were also identified. Other sources of revenue for the states, such as transfer payments from the federal government for which the states qualified by virtue of implementing administrative *per se* were also identified. Time series analyses of the costs associated with nighttime crashes (a proxy of alcohol-related crashes) were also examined and annual benefits associated with adoption of administrative *per se* were estimated. The results of these data collection activities and analyses are presented in the table below.

In each state studied, the direct revenues associated with license reinstatement fees for DWI offenders more than offset costs associated with the annual operation of the administrative license revocation law. Additionally, the laws enabled each state to qualify for Federal Title 408 alcohol incentive funding which greatly enhanced their resources for mounting anti-DWI programs. Though technically not a benefit because these monies were already in governmental coffers, 408 funds are funds that became available to the states which they otherwise would not have had. Most importantly, however, implementation of administrative license revocation resulted in dramatic decreases in the costs of nighttime crashes in each of the jurisdictions.

The unqualified recommendation of the study is that states not yet having adopted some form of administrative *per se* law for DWI give such legislation serious and approving consideration.

**Comparison of Economic Costs and Benefits of
Administrative Per Se in Nevada, Mississippi, and Illinois**

| <u>Category</u> | <u>Nevada</u> | <u>Mississippi</u> | <u>Illinois</u> |
|---|---------------|--------------------|-----------------|
| Direct Costs | | | |
| Start-up Costs | None Found | 1,200 | 82,144 |
| Annual Operating Costs | 200,787 | 54,914 | 769,871 |
| Direct Benefits | | | |
| Annual Reinstatement Fee Income | 284,000 | 118,288 | 1,645,590 |
| Transfer Payments | | | |
| Annual 408 Funds (5-year Limit) | 273,488 | 646,055 | 2,324,123 |
| Societal Benefits | | | |
| Annual Savings in Nighttime Crash Costs | 37,118,292 | 104,328,024 | 89,000,000 |

CHAPTER 1 - INTRODUCTION

This report presents the results of a research project sponsored by the National Highway Traffic Safety Administration (NHTSA) entitled "Cost Benefit Analysis of Administrative License Suspensions" (Contract No. DTNH22-88-C-07310). The project was conducted by Mid-America Research Institute and the University of North Carolina Highway Safety Research Center. The purpose of this project was to examine the costs of implementing laws calling for administrative license suspensions for driving while intoxicated (DWI) offenders, and to compare them with the benefits obtained. The benefits were measured in terms of direct fiscal consequences, such as license reinstatement fees, and societal benefits as reflected by reduced crash costs. The experience of three states with such a law, Nevada, Mississippi and Illinois, was examined.

BACKGROUND

Administrative license suspension laws or administrative *per se* laws as referred to in this report are laws which call for an administrative suspension or revocation of the driver's license of persons arrested for driving while intoxicated (DWI) or driving under the influence (DUI) who submit to a chemical test of their blood or breath alcohol concentration and have a resulting BAC at or above a legally set limit. This approach, administratively applying licensing sanctions to DWI offenders based on the facts of the arrest rather than contingent on the outcome of the criminal case, is an extension of the concept of implied consent. Implied consent statutes call for the immediate license suspension of persons arrested for DWI who refuse to submit to a test of their alcohol concentration. Such laws provide that by applying for a driver's license and operating a motor vehicle on public roads, a driver inherently consents to submit to an alcohol concentration test when a police officer has probable cause to suspect the driver of DWI.

Administrative license suspension or revocation for DWI is a relatively recent development in the sanctioning process for DWI offenders in the United States. Minnesota pioneered the concept in the mid-1970s and approximately half of the states have followed suit. It represents an attempt to insure that a driver license sanction for DWI is imposed with swiftness and certainty upon DWI offenders. This is accomplished by imposing that sanction through an administrative process initiated at the time of arrest by the arresting officer and typically executed by the state's Division of Motor Vehicles. The determination of guilt or innocence of the criminal charge of DWI is made through a separate judicial process in the courts. Appropriate further criminal sanctions such as fines and incarceration are then imposed by the courts on those found guilty of the criminal offense.

Such laws are typically implemented as follows. An individual is arrested for DWI and either submits to a chemical test or refuses to do so. If the person refuses to submit to a chemical test, the normal implied consent law comes into effect and driver license sanctions may be administratively imposed for the refusal. If the person submits to the chemical test and his or her alcohol concentration is at or above the *per se* level for that state, the administrative *per se* provisions apply. In either event, refusal or an alcohol concentration at or above the *per se* level, the officer confiscates the individual's license and provides the offender with a temporary license which contains a notice of suspension or revocation as well as information about appealing the loss of license.

License suspension or revocation is generally considered to be the single most effective DWI sanction in use for reducing DWI recidivism (Hagen, 1978; Hagen, Williams and McConnell, 1979; Popkin *et al.*, 1983; Salzberg, Hauser and Klingberg, 1981). An attractive feature of administrative *per se* is that imposing license suspension or revocation administratively at the time of arrest rather than as a consequence of conviction of DWI ensures that the largest possible number of apprehended DWI offenders receive and potentially be affected by this sanction.

Because only a relatively small percentage of DWI incidents ever result in an arrest, much less a conviction, a much larger traffic safety benefit could be realized if others in the potential drinking driving population were deterred from engaging in DWI by the mere threat of loss of license. The deterrence model (Ross, 1981) postulates that the potential effectiveness of a sanction in deterring this larger group is a function of its perception of the severity, certainty and celerity of imposition of the sanction. Clearly, drivers tend to perceive license revocation as a severe sanction (Nichols, no date; National Transportation Safety Board, 1984). Further, administrative *per se* laws increase the certainty and celerity of punishment for arrested offenders. Recent studies of the general deterrence effectiveness of administrative *per se* laws have indicated effectiveness in terms of crash reductions (Zador *et al.*, 1988; Lacey *et al.*, 1990; Ross, 1987; Jones, 1988). However, even in the face of such evidence, several states, including many of the larger ones have yet to implement administrative *per se* laws. To date, 29 states and the District of Columbia have such laws.

One reason that many of the remaining states have been reluctant to adopt an administrative *per se* law is a concern on the part of motor vehicles administrators that the costs of implementing such a program would be unduly burdensome. This concern prompted NHTSA to conduct this study attempting to document the costs of implementing administrative *per se* laws as well as the benefits, both in terms of enhanced revenues and reduced societal costs.

STUDY APPROACH

In an effort to make the study results as useful to as many states as possible, it was decided to conduct three sub-studies in three different states representing

three different areas of the country and three different sized states. Additionally, it was desired that the study states be jurisdictions where administrative *per se* laws had been in place long enough to be fully implemented. Another desire was to have some range in the types of administrative *per se* law that states have implemented, i.e., those that provide for administrative hearings of appeals versus judicial and a range in severity of sanctions.

With those considerations in mind, each of the 25 states with administrative *per se* laws at the time was considered in a systematic manner. Nevada was selected as a small western state with an administrative *per se* law which provided for hearings of appeals by Department of Motor Vehicles and Public Safety adjudicators. Nevada's law calls for a 45-day hard suspension for first time offenders with a provision for a restricted employment license after that period. Mississippi was selected as a somewhat larger, southeastern state. Appeals of the suspension are heard by judges within the criminal court system, generally as part of the disposition of the criminal case. Mississippi has a provision for reinstatement of driving privileges after 90 days for first time offenders who complete an alcohol education course. Illinois, the largest state with an administrative *per se*, represents the mid-west. Hearings of appeals of their administrative license suspension (labelled Summary Suspension in Illinois) are handled by the court system. Additionally judges may instruct the Secretary of State's Office to issue judicial driving privileges after a 30-day hard suspension has been served.

To gather information about potential costs and benefits of administrative license revocation in each of the jurisdictions, visits were made to each of the states and discussions held with persons in highway safety, driver licensing, enforcement and court agencies. Informal discussions were held in an attempt to identify potential components of both costs and benefits accruing from implementation of the law. As a consequence of those discussions, several different potential cost and benefit components were identified.

These included:

Start Up Costs - These are one-time costs associated with preparing for the implementation of an administrative *per se* law.

Training - All states set up some form of special training program to familiarize law enforcement, driver licensing and court personnel with procedures for implementing the law. In some states these activities were accomplished within the normal course of business and in others specific costs were identified.

Legal Advice - Advice on interpretation and proper implementation of the laws was also required in all jurisdictions. Again, in some jurisdictions, available, in-house expertise was used while in others there was billable time to this activity.

Forms Development - In some jurisdictions completely new forms were developed and in others the basic implied consent form was revised, or existing forms from other jurisdictions adapted. In most instances no specific costs were identified for this activity.

Facility Costs - In some states adopting administrative *per se*, additional facilities and equipment were required in order to provide the services necessary to implement administrative *per se*. That was not the case in any of the jurisdictions in this study.

Computer Programming Costs - The driver licensing computer programs typically have to be modified to accommodate this additional type of license revocation or suspension. Some programs readily accommodate such changes, in others, changes can be time consuming and thus relatively costly.

Operating Costs - These are recurring costs attributable to conducting the operational activities necessary to the continued implementation of an administrative *per se* law.

Driver Licensing Costs - These are generally personnel costs associated with recording notices of suspension and revocation and reinstatements. Also included may be routine office supply costs. In Illinois it also includes costs for liaison with the courts.

Forms Reproduction - These are additional printing costs associated with printing forms for implementing administrative license suspensions.

Mailing Costs - Normally, notices of suspension and revocation are mailed by certified mail and this item reflects such costs.

Hearings Office Costs - These costs are those associated with conducting hearings of appeals that are held by Motor Vehicles Departments. It includes personnel costs, supplies and in some cases witness costs, transcript costs and travel.

Court Costs - These would include costs to the courts in terms of additional personnel and supplies needed to conduct hearings in states where the courts were the first venue in the appeals process. It could also represent savings in terms of reduced court time in jurisdictions where the imposition of administrative licensing sanctions led to fewer contested cases and continuances and thus more efficient disposition of the criminal cases. Unfortunately, though it was the general impression in all of the jurisdictions that such time savings had occurred, it was impossible to measure those benefits in terms of any objectively measurable cost elements.

Police Time - This could represent costs in terms of additional time processing the initial arrest and appearing at hearings associated with appeals of the suspensions. It was the general consensus in all jurisdictions that arrest processing was minimally affected and that efficiencies realized in the court procedures with the criminal case more than offset any additional time that may be devoted to appeals of the administrative suspension.

PI&E Costs - To be maximally effective, a statutory change such as adoption of administrative *per se* must be brought to the public's attention. This is often partially accomplished through news media coverage of the legislative deliberations, but should in most cases be supplemented by public information and education (PI&E) activities. Virtually every state uses a portion of its federal highway safety funds to publicize anti-drunk driving efforts and often are searching for new themes. Thus, PI&E surrounding administrative license suspension is usually integrated into existing PI&E efforts and does not involve additional costs to the state. Consequently, we have not considered PI&E costs as an additional cost associated with implementing such programs.

Operational Benefits - This is the dollar value of any direct revenues resulting from administrative *per se*.

Reinstatement Fees - These are revenues accumulated by charging persons receiving administrative license revocations a fee for reinstatement of their license.

Federal Incentive Grant Benefits - Congress has provided for incentive grants to states that give indication of aggressive programs against impaired driving. One of the requirements for receiving these Section 408 grants is evidence that DWI offenders receive license suspension or revocation within 45 days of the offense. Most states that have received Section 408 grants have met the license suspension requirement, which is usually the most difficult requirement to meet, through adoption of administrative *per se* laws. That is the case for each of the states in this study. These monies, in a technical sense, may not be considered benefits to society because they are monies already in governmental hands. Thus they are technically transfer payments. However, for state program administrators they represent a very real source of funds that would otherwise not be available to that state.

Crash Cost Benefits - This is the dollar value of any changes in crash patterns attributable to the law.

Data collection activities to gather information about each of the cost and benefit items were fairly straightforward. Further contacts were made with persons in the agencies responsible for implementing various aspects of the law and documentation of costs in each of the areas obtained. As might be expected, the

extent of documentation of the actual costs for each element varied greatly within each jurisdiction and between jurisdictions. However, a good faith effort was made to identify potential costs and benefits and gather the most accurate data possible about each of those items. In some instances, we had to rely on the estimates of the professionals involved.

Somewhat more complicated was the process involved in estimating the economic benefits associated with potential crash reductions as a result of adoption of the laws. The following basic approach was followed. Copies of the statewide crash data for each of the jurisdictions were obtained. Several data analysis steps were then taken. First a KABCO (K = fatal, A = severe injury, B=moderate injury, C = minor injury and O = property damage only) crash severity was determined for each crash from indications of the KABCO injury severity of the crash involved occupants. Costs were then assigned to each crash using the values in the costs by severity table below. These costs are developed using the willingness to pay methodology which attempts to determine the dollar value the public is willing to pay to make changes in the probability that a crash of each level of severity would occur. These costs include the direct crash costs as well as indirect costs such as decreased productivity, police and insurance costs, paperwork, quality of life and society's values attributed to life and safety (Kragh, Miller, and Reinert, 1986). The values used in this study were obtained from Miller, Luchter, and Brinkman (1989, 1990) as the latest estimates. They maintain that the willingness to pay approach is the most appropriate for performing cost benefit analyses.

| <u>Crash Severity</u> | <u>Cost</u> |
|-----------------------|-------------|
| K | \$2,261,497 |
| A | 100,569 |
| B | 22,359 |
| C | 14,393 |
| PDO | 3,560 |

Costs for all crashes, alcohol-related crashes and nighttime crashes were then accumulated by month to yield crash cost data series for total crashes, alcohol-related crashes and nighttime crashes. Time series analyses were then carried out to estimate any change in the levels of these crash costs that may be associated with the adoption and implementation of administrative *per se*. A more detailed description of the analytical approach appears in Appendix A.

The final step in the process is to compare the costs identified with the monetary value of the benefits derived, both in terms of direct revenues and reduced costs to society through crash reductions. These data are presented at the end of each chapter describing the study of specific states and, in summary, in the concluding chapter.

ORGANIZATION OF THIS REPORT

This report consists of this introductory chapter discussing the background of the study, and the methods used in its conduct, followed by three chapters discussing the results obtained in each of the states studied, and a concluding chapter. The state studies describe the process of implementing the provisions of the law in each state and discuss the economic costs and benefits identified in each state. The concluding chapter contains a discussion of the implications of the findings of the three state studies.

CHAPTER 2 - COSTS AND BENEFITS IN NEVADA

This chapter contains a description of the administrative license revocation process as dictated by Nevada's law, followed by a description of the costs identified with start-up for implementation of the law and the annual costs for implementation of the law. This is followed by a discussion of the financial benefits accruing due to the law as indicated by direct revenues through license reinstatement fees, transfer payments through federal incentive grant income, and societal benefits due to decreased crash costs.

THE ADMINISTRATIVE SUSPENSION PROCESS

Nevada adopted its administrative licence revocation law effective July 1, 1983. The process is comprised of the following steps:

- After the driver has been arrested for drunk driving, but before he or she is transported to the testing facility, the arresting officer advises the driver of the consequences of failing to submit to a chemical test.
- If the driver either refuses to submit to a chemical test, or submits to the test but fails it (has a blood alcohol concentration of .10% or higher), then the officer seizes the driver's license and serves a "notice of revocation" on the driver.
- A driver who is given the notice of revocation and whose license is seized is given a seven-day temporary license; during that time, he or she has the option of requesting a hearing before a Department of Motor Vehicles and Public Safety hearing officer to review the arresting officer's revocation order.
- If the driver requests a hearing, then he or she is given another temporary permit that is valid until the hearing is held.
- The Department's hearing is limited to the issue of whether the driver failed to submit to the chemical test, or had a blood alcohol concentration of .10% or more *at the time of the test*. If the hearing officer determines that the driver in fact refused or failed the test, he or she upholds the license revocation; otherwise, the hearing officer rescinds the revocation and orders the reissue of the driver's license.

- A Department of Motor Vehicles and Public Safety hearing decision upholding a license revocation is appealable to the District Court. Nevada law provides that the court may stay the revocation itself, pending review, only if the driver has presented a "substantial question" for review. However, it has been reported that courts usually grant defense attorneys' petitions for an order staying the revocation. A stay order "stops the clock" on a revocation period. The District Court is required by law to review the Department's decision solely on the record of the hearing (those issues considered at the hearing and evidence presented there).
- If the District Court upholds the revocation, the driver may appeal to the Nevada Supreme Court. If the court reverses the Department's decision, the driver is given back his or her license.
- A first offender who records an alcohol concentration of .10% or more on a chemical test receives a 90-day revocation; however, after 45 days, he or she may apply to the Department for a restricted license allowing restricted travel for reasons of hardship. A first offender who fails to submit to a test receives a one-year revocation and may, after six months, apply for a restricted license. Second offender refusers receive a three-year revocation. Nevada's implied consent law is harsher on a driver convicted in court of drunk driving after refusing a test: the mandatory revocation for conviction is added to the revocation imposed for refusing to submit to the test.
- The criminal charge of driving under the influence is pursued on a separate track through the court system, and conviction of the offense results in other sanctions in addition to revocation such as fines, jail or community service, and court costs.

Copies of Nevada's DUI laws and basic forms used in the administrative *per se* process appear as Appendix B.

START-UP COSTS

This section contains a discussion of the specific start-up costs that were identified as associated with implementing administrative *per se* in Nevada. They are presented in the same basic sequence as described in the introductory chapter.

Training - Nevada used existing capabilities to develop training materials and, using persons from state government offices, conducted several training sessions for law enforcement, court and driver licensing personnel across the state. The Governor's plane was put at their disposal at no cost resulting in no chargeable travel costs. Thus, there were no identifiable costs associated with training in Nevada.

Legal Advice - Again, existing resources within the Department of Motor Vehicles and Public Safety legal staff were used to offer guidance as to the proper implementation of the law with no identifiable additional cost.

Forms Development - Minnesota's forms were used as a model and were revised to accommodate Nevada's law. During the first few years of program implementation there were further revisions. Again, minimal existing resources were used for this activity and no direct costs identified.

Facility Costs - Hearings of appeals are granted in the county of residence of the offender. Mechanisms for granting such hearings for other reasons such as implied consent refusal suspensions were already in place so there were no facility costs associated with implementing the law.

Computer Programming Costs - Nevada's driver licensing programs were readily adaptable to accommodate the additional revocation codes and reinstatement codes associated with administrative revocation. These modifications were handled within the normal course of business.

In summary, Nevada's system was readily able to accommodate administrative *per se*, with the basic components of the needed system already in place for other purposes. Thus, no specific start-up costs were identified for Nevada.

ANNUAL OPERATING COSTS

This section contains a discussion of the additional annual costs associated with the actual implementation of administrative *per se* in Nevada and again follows the basic format presented in the introduction.

Driver Licensing Personnel Costs - The Driver Licensing office required an additional data entry clerk to handle the increased volume of paperwork associated with recording and mailing notice of revocations to offenders. This amounts to an annual cost of \$24,000.

Forms Reproduction and Mailing - The costs associated with printing the necessary forms and mailing revocation notices are estimated to be \$18,000 per year.

Hearings Office Costs - The volume of hearings requested increased by approximately 1,000 per year. Several costs were identified that are associated with this increase. They are salaries and benefits for 1.2 Deputy Attorneys General, 1.2 hearings Officers and 1.5 Clerical personnel totaling \$135,602. Travel costs totaled \$1,220 and supplies were \$2,136. Witness fees equaled \$18,304 (In Nevada, witnesses subpoenaed to testify at such hearings, including off-duty police officers, are paid a \$25 witness fee and reimbursed for travel costs.) Transcript costs were

\$1,525. Thus, the totals in increased annual costs in the Hearings Office associated with implementing administrative *per se* were \$158,787.

Court Costs - Although a few administrative *per se* revocations are appealed to the court system, it is the consensus that the resultant smoother processing of the criminal case more than offsets any associated costs.

Police Time - Though some minimal time is associated with filling out the notice of revocation, and some time is devoted to appearing at hearings appealing the revocation (approximately 15 percent of administrative *per se* revocations are appealed in Nevada), it is the consensus of those we contacted that fewer contested cases in the criminal courts offsets this additional time.

Though the basic mechanisms were in place in Nevada for implementing administrative *per se*, implementation of the law resulted in a large increase in the volume of revocations issued (between 7,000 and 8,000 per year) and hearings requested to appeal those revocations (approximately 1,000 per year). This led to measurable increases in operating costs within the Department of Motor Vehicles and Public Safety. These increases in operating costs totaled \$200,787 per year.

REVENUES

There are two forms of additional revenue to the state arising from administrative *per se* in Nevada. These are a license reinstatement fee of \$50 charged to each person reinstating their license and eligibility for transfer payments from the Federal Government in the form of Federal Title 408 incentive grants.

License Reinstatement Fees - In 1989, Nevada realized revenues of \$284,000 in license reinstatement fees. This is somewhat higher than the previous three year average of \$215,050 because of a new practice introduced in 1989 of notifying revokees of their eligibility for reinstatement. This has led to an increase in the proportion of persons actually reinstating and thus increased revenues. In any event, these direct revenues more than offset identified costs of implementing the program.

Title 408 Grant Funds - Nevada became eligible for 408 funding with their new law and thus became eligible for grants for anti-DWI activities amounting to \$273,488 per year for up to five years. They have received four years of that funding and are now applying for a fifth and final year. They used some of those funds to help defray operating costs of the administrative *per se* program in its initial years. All such costs have now been absorbed into the state operating budget and these funds are being used to enhance other anti-DWI activities. Though technically a transfer payment from Federal to State funds, these revenues are of direct benefit to the State.

ECONOMIC BENEFITS FROM REDUCED CRASHES

To evaluate the cost effectiveness of the legislative change, crash frequency data were converted into monthly series of crash costs which were functions of crash severity as well as crash frequencies. Crash severity was assigned as the most severe injury to any crash involved person based on the KABCO scale. A crash cost was then assigned using the following crash costs from Miller, Luchter, and Brinkman (1990) as indicated in Chapter 1.

Crash costs were summed by month for all crashes, nighttime crashes, and alcohol-related crashes to yield three time series of monthly crash costs over the time interval January 1980 through December 1987.

Two measures of effect, alcohol related and nighttime crashes, were used for the following reasons. Alcohol-related crashes (i.e., crashes in which alcohol was judged to be a factor by the investigating officer) rely on the officer's judgement and thus involve a certain amount of subjectivity. Thus, measures such as the proportion of crashes reported to be alcohol-related may also be influenced by factors other than the law change such as increased training, changes in command emphasis, and the like. However, the number of nighttime crashes is an objective measure, and a large percentage of such crashes are thought to involve drinking drivers, although, of course, not all do. Nor do all crashes involving drinking drivers occur at night. Thus even a program that is effective in reducing alcohol-related crashes would only be expected to be affecting a portion of nighttime crashes, making it more difficult to discern such an effect if it is present.

Therefore, both measures we examined have drawbacks, one by the subjective nature of its determination and the other because of its lessened sensitivity to potential effects. Nonetheless, these two types of crashes are often taken as the best available measures of alcohol-related crashes, and, particularly, if the results of the analyses of both measures are in the same direction, one may have increased confidence in those results.

These series were analyzed to estimate any abrupt decreases in crash costs coinciding with the legislative changes, and to make projections of crash costs and savings based on the pre-law data. Figures 2.1 - 2.5 show graphs of the data series over time. Total crash costs, alcohol-related crash costs, and nighttime crash costs are shown in Figures 2.1 - 2.3, respectively. Figures 2.4 and 2.5 show series of alcohol-related crash costs as a percent to total crash costs and nighttime crash costs as a percent of total costs. The time series modeling was actually carried out using these last two data series. In the percent or ratio form, many factors which might affect crash frequency and/or severity in both numerator and denominator should tend to cancel out. Such factors might include changes in population, changes in general traffic laws and/or enforcement, seasonal factors, changes in vehicle sizes and/or crashworthiness.

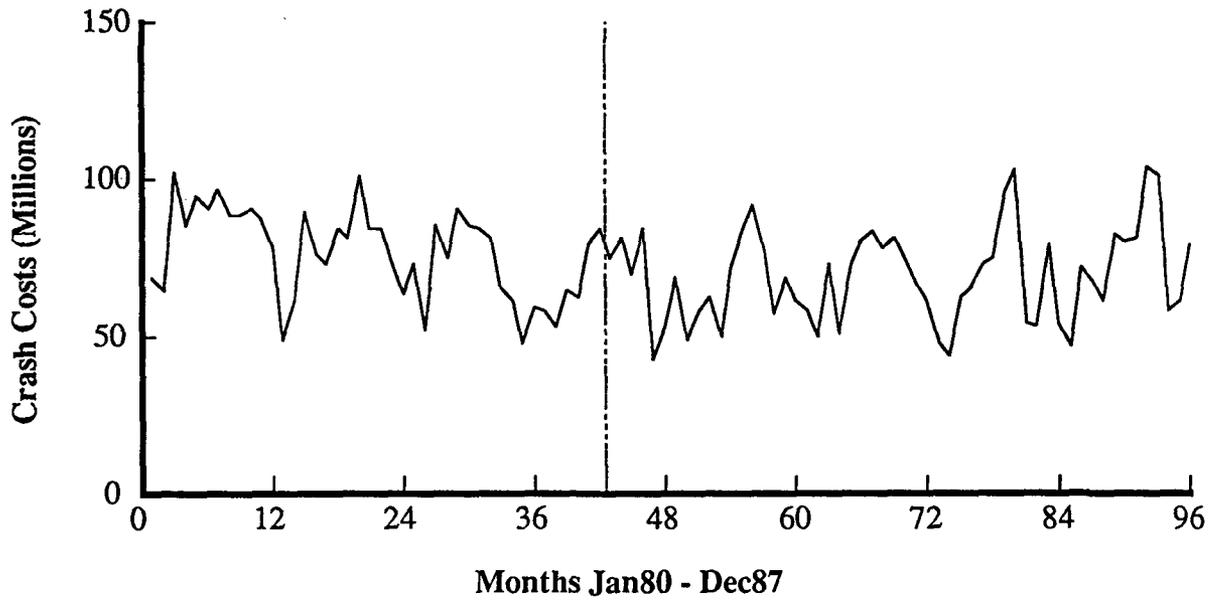


Figure 2.1. Nevada total crash costs by month.

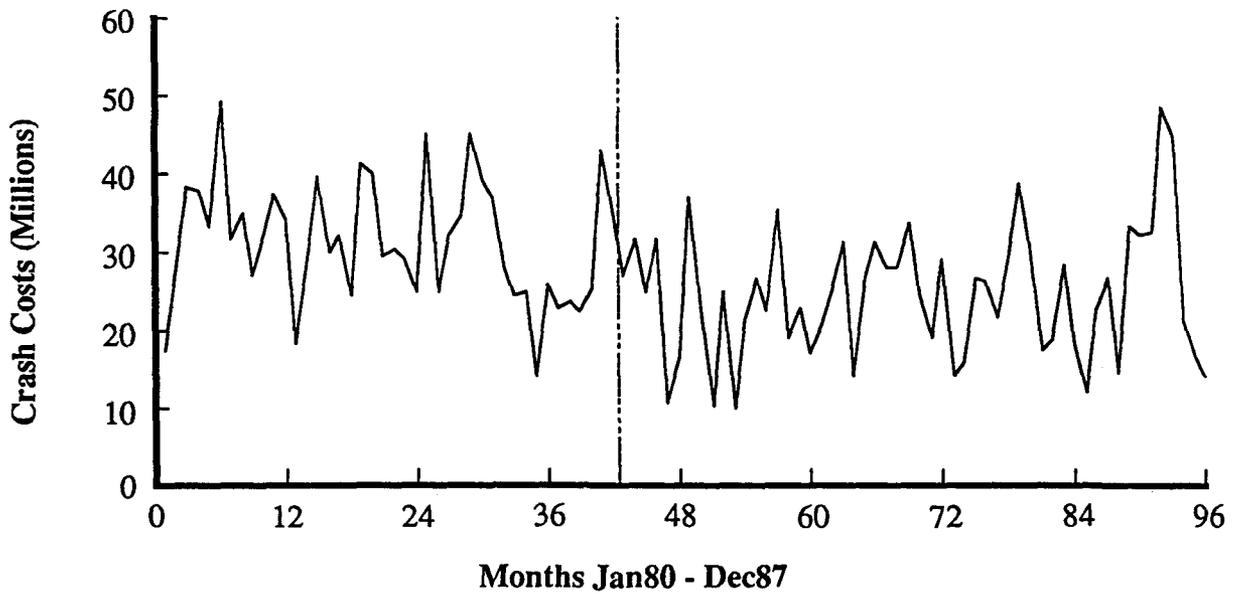


Figure 2.2. Nevada alcohol-related crash costs by month.

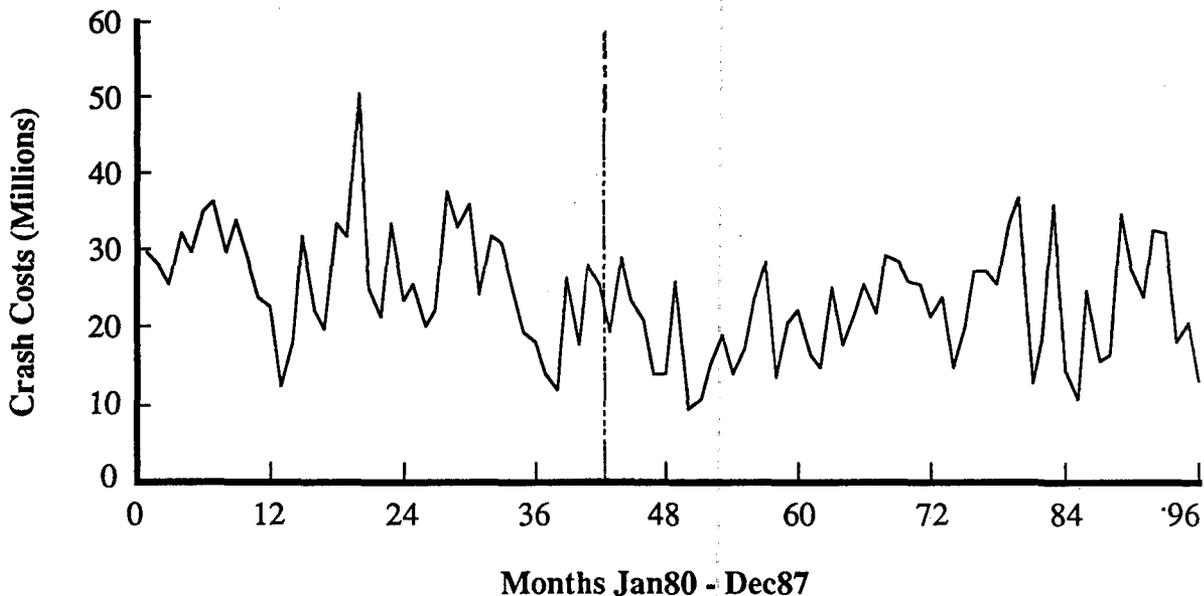


Figure 2.3. Nevada nighttime crash costs by month.

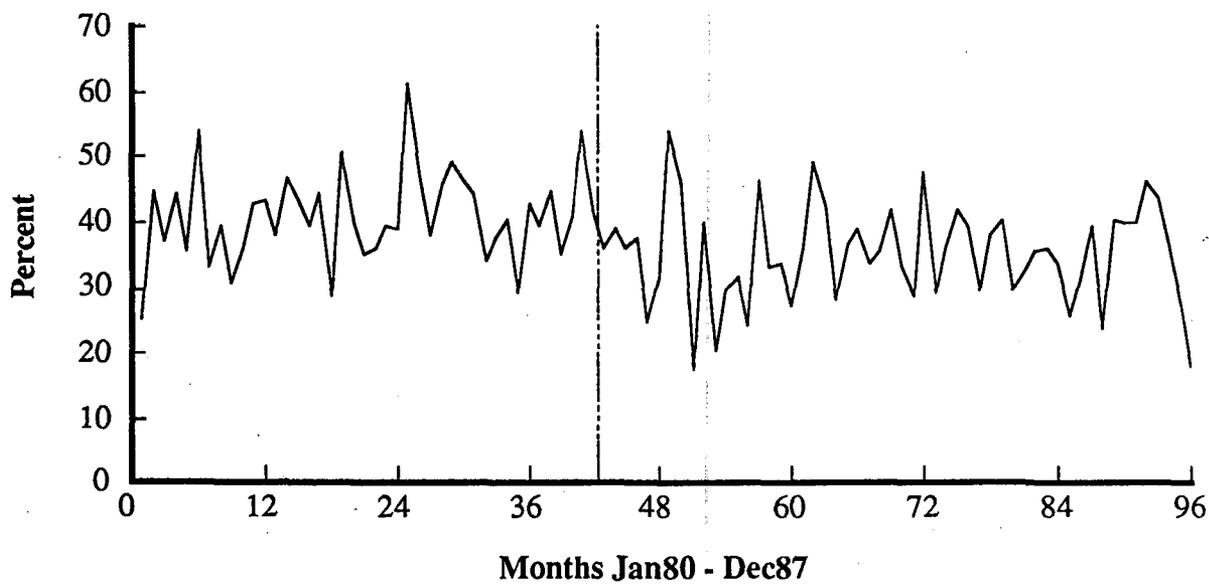


Figure 2.4. Nevada alcohol-related crash costs as a percent of total crash costs.

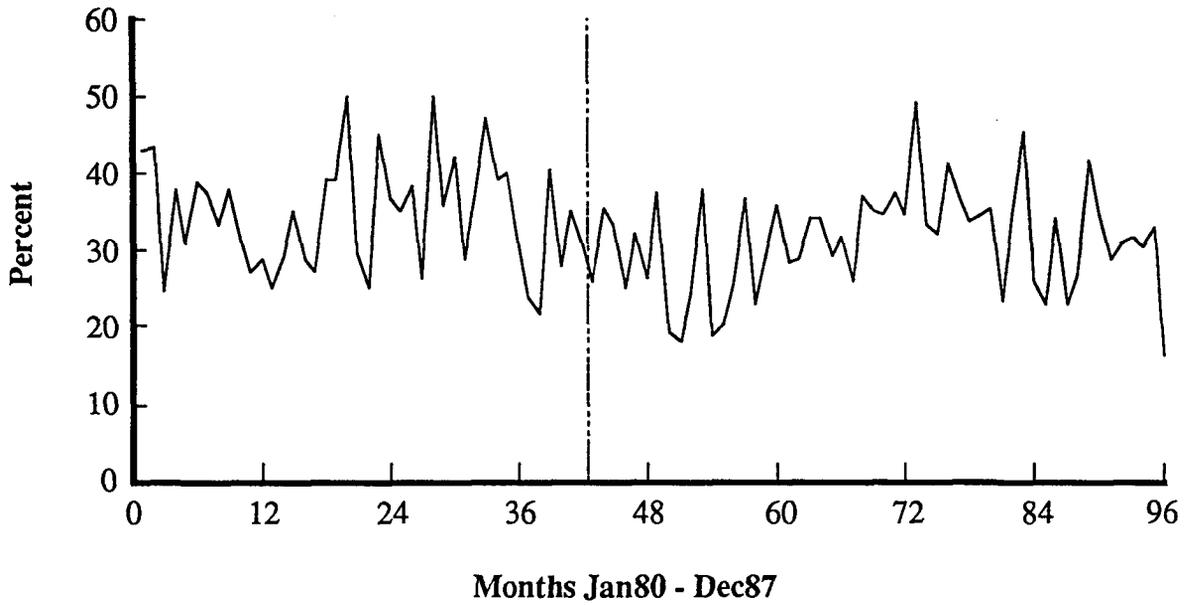


Figure 2.5. Nevada nighttime crash costs as a percent of total crash costs.

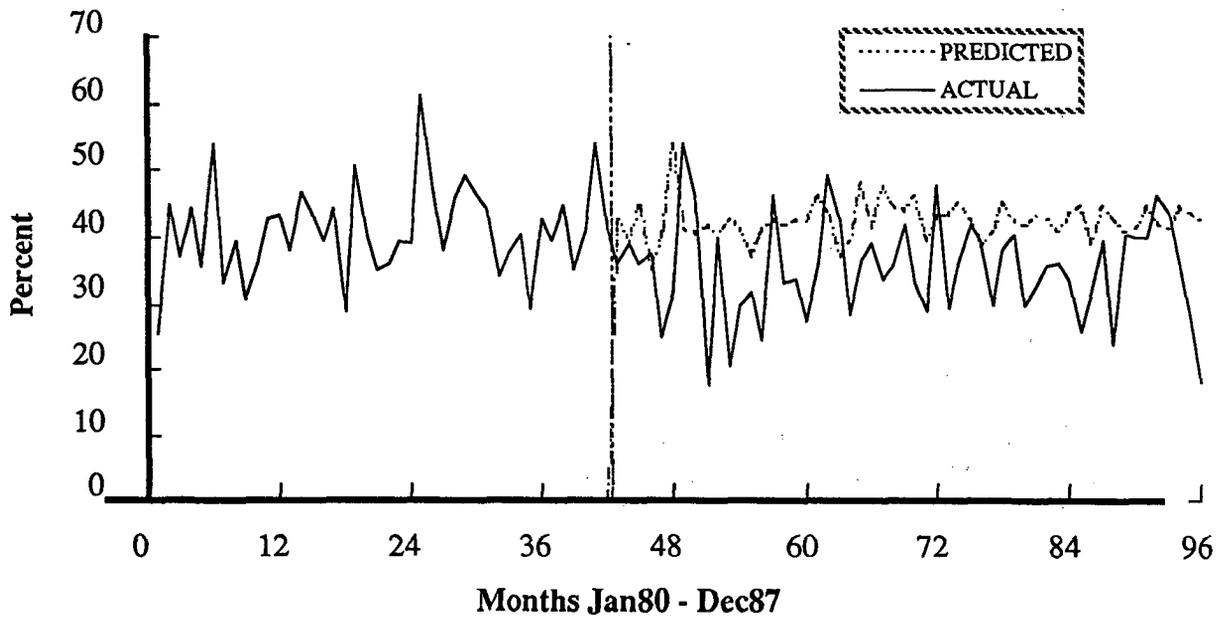


Figure 2.6. Nevada actual and predicted alcohol-related cost percents.

Structural time series models of the type used by Harvey and Durbin (1986) were fit to the percent alcohol-related crash cost series, and the percent nighttime-crash cost series. These models can contain randomly varying levels, slopes, and seasonal factors. They also can contain effects due to interventions or other exogenous variables. Models which contained an intervention variable in the form of a shift in level corresponding to July 1, 1983 were first fit to the entire data series. The estimated intervention effects were as shown below.

| <u>Series</u> | <u>July 1983 Effect</u> | <u>P-Value</u> |
|-----------------|-----------------------------|----------------|
| Percent Alcohol | -5.34 | <.01 |
| Percent night | -3.37 | <.05 |

These results show that significant decreases were estimated to have occurred in July 1983 in both the percent of alcohol-related crash costs and in the percent of nighttime crash costs. The estimated decrease in the percent of alcohol-related costs was over 5 percentage points, while that for percent nighttime crash costs was over 3 percentage points. Over the entire span of the data (96 months) the series were, virtually, random in the sense that there was no significant month-to-month autocorrelation. The models described above, thus, contained only a fixed mean value or level and the intervention variable.

Models were then fit to the data series using data only through June 1983. These models were used to make forecasts or projections of alcohol-related and nighttime crash costs had they remained at the June 1983 levels. Figure 2.6 shows the forecast of this series along with the actual values from July 1983 through December 1987. The forecast shown in Figure 2.6 is a forecast of the percent of alcohol-related crash costs relative to total crash costs. A forecast of alcohol-related crash costs was then obtained by a month-to-month multiplication of forecasted percents times the actual total crash costs. The difference between the forecasted alcohol-related crash costs and actual alcohol-related crash costs were then summed over the months July 1983 - December 1987 to give an estimated alcohol-related crash cost savings of \$259,372,638 or \$57,638,364 per year over the 4-1/2 year period.

Projections of nighttime crash costs were made by fitting a model to the percent nighttime crash costs over the period January 1980 - June 1983. Following a procedure similar to that described in the paragraph above, a total cost savings in nighttime crash costs of \$167,032,314 or \$37,118,292 per year was estimated.

SUMMARY AND CONCLUSIONS

The overall identified start-up and annual implementation costs for administrative license revocation in Nevada are listed in the following table along with identified monetary benefits both in terms of actual revenues, transfer payments and societal benefits.

**Economic Costs and Benefits Associated with Adoption of
Administrative License Suspension in Nevada**

| | |
|--|-----------------|
| Direct Costs | |
| Start-up Costs | None Identified |
| Annual Operating Costs | 200,787 |
| Direct Benefits | |
| Annual Reinstatement Fee Income | 284,000 |
| Transfer Payments | |
| Annual 408 Funds (5-year limit) | 273,488 |
| Societal Benefits (nighttime and alcohol crash benefits are not additive) | |
| Annual Savings in Alcohol- Related Crash Costs | 57,638,364 |
| Annual Savings in Nighttime Crash Costs | 37,118,292 |

Examination of the table above reveals that direct revenues to the state through license reinstatement fees more than offset the increased annual costs associated with program implementation. The viability of the State's highway safety program was further enhanced by the law by helping attain eligibility for 408 funding which amounts to \$273,488 per year for up to five years. However, perhaps of even more compelling interest is the societal benefit in terms of reduced crash costs, whether measured by the officer's subjective determination of alcohol involvement or by the proxy measure of nighttime crashes. These are two separate estimates of societal benefits and should be considered separately and not added together.

It is clear, from the cost-benefit standpoint that adoption of an administrative *per se* law in Nevada has been a positive action.

CHAPTER 3 - COSTS AND BENEFITS IN MISSISSIPPI

This chapter contains a description of the administrative license suspension process as dictated by Mississippi's law, followed by a description of the costs associated with initiating the implementation of the law and the annual operational costs of the law. This is followed by a discussion of the economic benefits accruing from the law as indicated by direct revenues through license reinstatement fees, transfer payments through federal incentive grant income, and societal benefits due to decreased crash costs.

THE ADMINISTRATIVE SUSPENSION PROCESS

Mississippi adopted its administrative license revocation law effective July 1, 1983. Mississippi's administrative license suspension process is comprised of the following steps:

- After the driver has been arrested for drunk driving, the arresting officer advises the driver of the consequences of failing to submit to a chemical test.
- If the driver either refuses to submit to a chemical test, or submits to the test but fails it (has a blood alcohol concentration of .10% or higher), then the officer seizes the driver's license and serves a "Violator's Suspension Notice" on the driver.
- A driver who is given the suspension notice and whose license is seized is given a 30-day temporary license; during that time, he or she may request a trial on the criminal charge before the permit expires.

If the court is unable to conduct a trial before the thirty days are up, it may order the Commissioner of Public Safety to issue up to two additional 30-day permits. However, the privilege to drive may not be extended over 90 days from the date of initial seizure.

The court's disposition of the criminal DWI case rules in the matter of the administrative *per se* suspension. In other words, if the court finds the defendant not guilty, their license is reinstated, but if the person is found guilty, the administrative suspension stands, as well as any other sanctions the court may impose.

- A first offender who records an alcohol concentration of .10% or more on a chemical test receives a 90-day suspension if he or she

completes an approved alcohol education course, otherwise the suspension is for one year. A first offender who fails to submit to a test receives an additional 90-day suspension. Second offenders receive a two year suspension that may be reduced to one year by completion of an approved treatment program. Those who refuse a chemical test receive an additional one year suspension.

Mississippi's administrative suspension law clearly creates an incentive for offenders to achieve rapid disposition of their case.

Copies of Mississippi's DUI laws and basic forms used in the administrative *per se* process appear as Appendix C.

START-UP COSTS

This section contains a discussion of the specific start-up costs that were identified as associated with implementing administrative *per se* in Mississippi. They are presented in the same basic sequence as described in the introductory chapter.

Training - Mississippi incorporated training into routine in-service training activities and estimated any training costs to be negligible. Thus there were no identifiable costs associated with training in Mississippi.

Legal Advice - Again, existing resources within the Attorney General's office were used to offer guidance as to the proper implementation of the law with no identifiable additional cost.

Forms Development - Costs associated with designing the new forms associated with administrative *per se* were estimated to be \$200.

Facility Costs - Hearings are handled within existing court facilities and in fact are the court proceedings associated with trying the criminal case. Thus there were no costs in this area.

Computer Programming Costs - Mississippi's driver licensing programs were readily adaptable to accommodate the additional revocation codes and reinstatement codes associated with administrative revocation. These modifications were handled at a cost of approximately \$1,000.

In summary, Mississippi's system was readily able to accommodate administrative *per se* since it required no additional hearings on the part of the Department of Public Safety since the criminal disposition of the case governed the administrative suspension. With the basic components of the needed system already in place for other purposes, only \$1,200 of start up costs were identified for Mississippi.

ANNUAL OPERATING COSTS

This section contains a discussion of the additional annual costs associated with the actual implementation of administrative *per se* in Mississippi and again follows the basic format presented in the introduction.

Driver Licensing Personnel Costs - The Driver Licensing office required an additional clerical person to handle the increased volume of paperwork associated with recording and mailing notice of suspensions to offenders. This amounts to an annual cost of \$18,000.

Forms Reproduction - The annual cost associated with printing the necessary forms is estimated to be \$1,364.

Mailing Costs - The costs associated with mailing notices of suspension from the Department of Public Safety are estimated to be \$35,550 per year.

Hearings Office Costs - Hearings are handled through the court disposition of the criminal case and thus there are no additional hearings costs.

Court Costs - The Mississippi court system at the Municipal or Justice Court level which provides initial hearing to DWI cases underwent significant restructuring at the time that the administrative *per se* statute was going into effect. Whereas in many jurisdictions the cases were heard by lay judges in their normal place of business, the cases are now more typically held in government provided facilities and more structured reporting practices are in effect. This change, in concert with the incentive to have dispositions reported to the Department of Public Safety because of the administrative *per se* law, has resulted in more efficient disposition of DWI cases. Thus, though not quantifiable, it is clear that the law has not resulted in increased court costs.

Police Time - Though some minimal time is associated with filling out the notice of revocation, it is the consensus that the incentive to reach disposition of the criminal charge brought about by the administrative *per se* law has resulted in cost savings to police, though not quantifiable.

Though the basic mechanisms were in place in Mississippi for implementing administrative *per se*, implementation of the law essentially resulted in a doubling of revocations issued each year. This necessitated the hiring of additional clerical staff, but since essentially no additional hearings resulted either at the Department of Public Safety or in the Courts, there were few other additional costs associated with implementation of the law. The increases in operating costs totalled \$54,914 per year.

REVENUES

There are two forms of additional revenue to the state arising from administrative *per se* in Mississippi. These are a license reinstatement fee of \$25 charged to each person reinstating their license, and eligibility for transfer payments from the Federal Government in the form of Federal Title 408 incentive grants¹.

License Reinstatement Fees - In Mississippi, the license reinstatement fee for administrative *per se* offenders is \$25. Mississippi does not track license reinstatement fees by cause of suspension. Thus, it was necessary to estimate revenues realized through this process. The additional annual number of revocations issued for persons testing over .10 was calculated based on BAC test result and license revocation data. Then a conservative reinstatement rate of 50% of eligible persons was assumed and potential revenues calculated. This resulted in an estimate of \$118,288 in additional reinstatement fees collected annually as a result of the adoption and implementation of administrative license suspension.

Title 408 Grant Funds - Mississippi became eligible for 408 funding with their new law and thus became eligible for grants for anti-DWI activities amounting to \$646,055 per year for up to five years. They have received all five years of that funding. They used some of those funds to help defray operating costs of the administrative *per se* program in its initial years. All such costs have now been absorbed into the state operating budget and these funds are being used to enhance other anti-DWI activities. These monies, in a technical sense, may not be considered benefits to society because they are monies already in governmental hands. Thus, they are technically transfer payments. However, for state program administrators they represent a very real source of funds that would otherwise not be available to that state.

ECONOMIC BENEFITS FROM REDUCED CRASHES

Accident data were obtained from the State of Mississippi and analyzed using the same process as was used with Nevada data. In particular, each crash was assigned a (KABCO) severity rating and a corresponding cost. Costs were then aggregated into monthly cost units for all crashes, alcohol-related crashes, and nighttime crashes. From Mississippi, data were obtained over the time period January 1980 - December 1988. As in Nevada, the primary intervention point (i.e., effective date of major legislative changes in DUI laws) was July 1983.

¹ A special aspect of Mississippi's administrative *per se* law is the provision of an additional \$10 assessment for DUI convictees to be used for DUI related activities by the Governor's Highway Safety Program.

Though not truly a revenue directly attributable to administrative *per se* and thus not included in this analysis, it has resulted in additional revenue in the amount of \$238,000 annually.

Time plots of the three crash cost series are shown as Figures 3.1, 3.2 and 3.3, respectively, while Figures 3.4 and 3.5 show alcohol-related and nighttime crash costs as percents of total crash costs. Alcohol-related crash costs (Figures 3.2 and 3.4) are seen to be quite low compared to total crash costs and nighttime crash costs. This suggests that alcohol-related crashes may have been substantially underreported throughout the entire time interval. No further analyses were done using alcohol-related crash data.

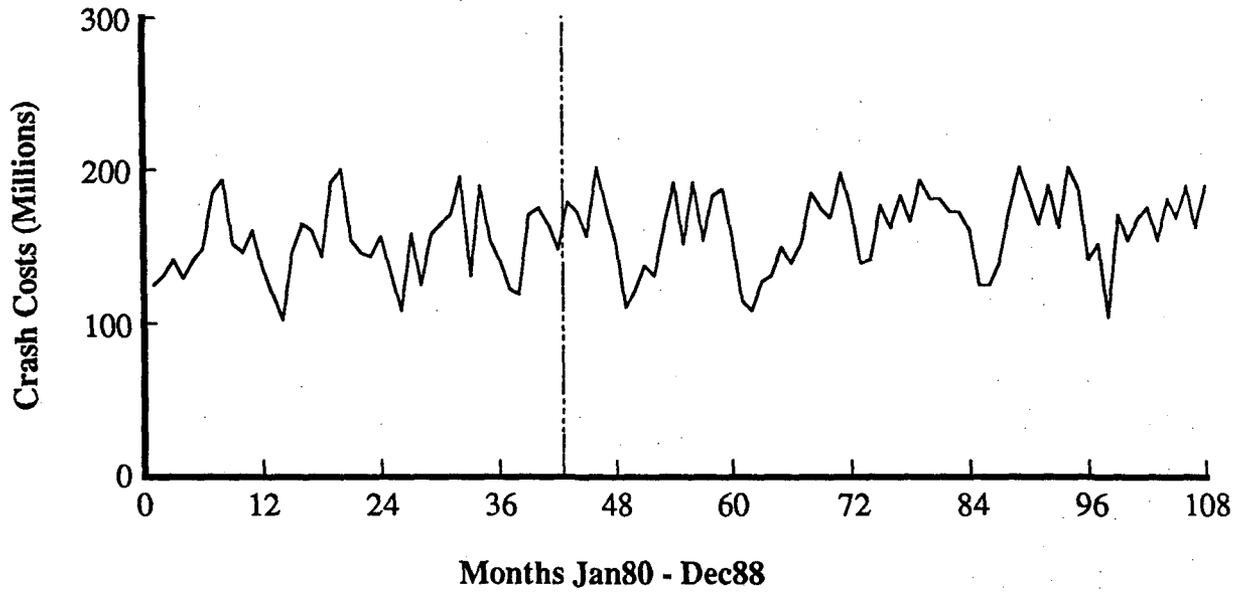


Figure 3.1. Mississippi total crash costs by month.

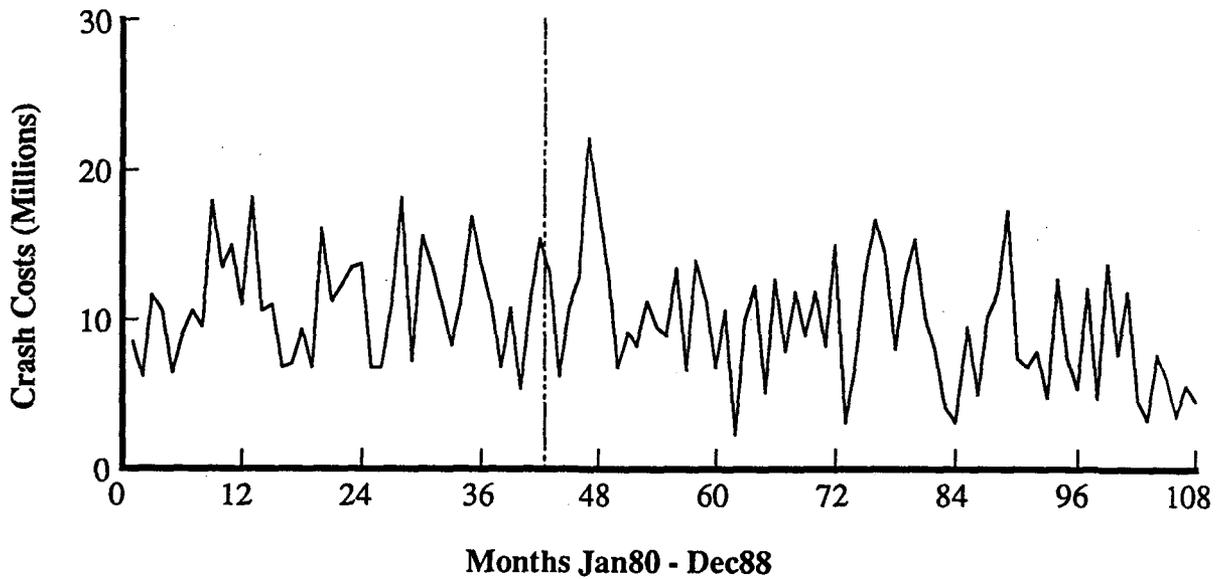


Figure 3.2. Mississippi alcohol-related crash costs by month.

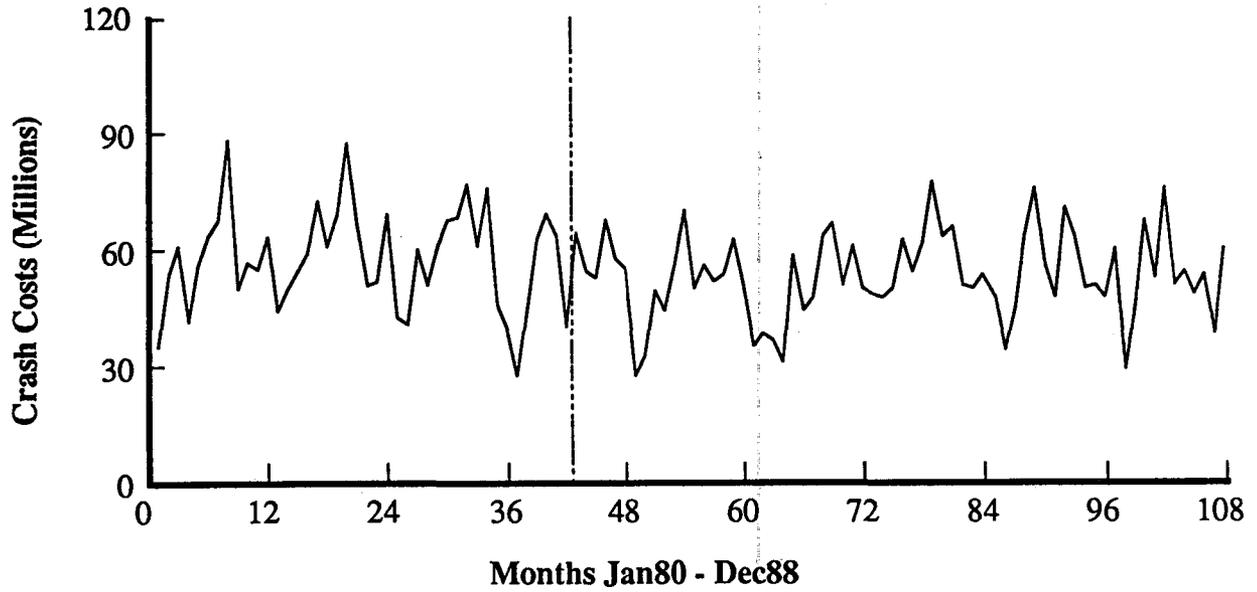


Figure 3.3. Mississippi nighttime crash costs by month.

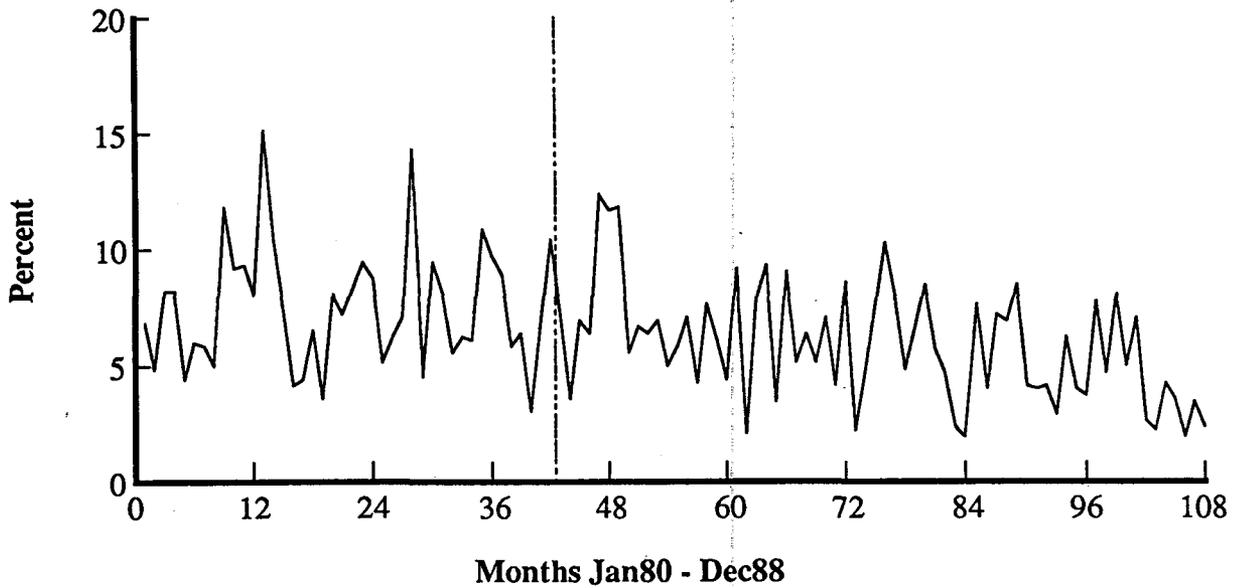


Figure 3.4. Mississippi alcohol-related crash costs as a percent of total crash costs.

Figure 3.5 shows nighttime crash cost percents to be at a lower level following the intervention than prior to the intervention, though the decrease seems to have started some months before the July 1, 1983 intervention date. Two models fit to the nighttime cost percent series are shown in figures 3.6 and 3.7. The model in Figure 3.6 contains a stochastic or randomly varying level and an intervention effect. In this model the level of the series decreased prior to July 1983, and the estimated intervention effect was a decrease of about 1.5 percentage points which was not statistically significant ($p > .25$). The model shown in figure 3.7 contains a fixed level and an intervention effect. In this form the estimated intervention effect is an abrupt decrease of about 5.5 percentage points and is highly significant ($p < .005$). The model of figure 3.7 fits the data somewhat better than that of figure 3.6; $R^2 = .220$ for the figure 3.7 model vs. $R^2 = .153$ for the model of figure 3.6. Both models produce uncorrelated residuals. Thus, the data seem to be fairly consistent with an abrupt decrease in level at the point of intervention, July 1983, though, in fact, some of the benefits of this legislation change may have begun some months prior to that date.

To estimate cost savings in Mississippi nighttime crashes, a model was fit to the nighttime cost percent series using only the data points through June 1983. Projections were then made of nighttime cost percents over the interval July 1983 - December 1988. This projection is shown in figure 3.8. As was done with Nevada data, nighttime costs were then projected as the product of the predicted percent times actual total crash costs, and differences between projected and actual costs summed over the 66-month post intervention period. The process yielded an estimate of total nighttime crash cost savings of \$573,804,132 or \$104,328,024 per year.

SUMMARY AND CONCLUSIONS

The overall identified startup and annual implementation costs for administrative license revocation in Nevada are listed in the following table along with identified monetary benefits both in terms of actual revenues, transfer payments and societal benefits.

**Economic Costs and Benefits Associated with Adoption of
Administrative License Suspension in Mississippi**

| | |
|--|-----------------|
| Direct Costs | |
| Start-up Costs | 1,200 |
| Annual Operating Costs | 54,914 |
| Direct Benefits | |
| Annual Reinstatement Fee Income | 118,288 |
| Transfer Payments | |
| Annual 408 Funds (5-year limit) | 646,055 |
| Societal Benefits (nighttime and alcohol crash benefits are not additive) | |
| Annual Savings in Alcohol- Related Crash Costs | none calculated |
| Annual Savings in Nighttime Crash Costs | 104,328,024 |

Examination of the table above reveals that direct revenues to the state through license reinstatement fees more than offset the increased annual costs associated with program implementation. The viability of the State's highway safety program was further enhanced by the law by helping attain eligibility for 408 funding which amounts to \$646,055 per year for up to five years. However, perhaps of even more compelling interest is the societal benefit in terms of reduced crash costs, as measured by the proxy measure of nighttime crashes. Unfortunately the more direct measure of alcohol involvement, officers' subjective estimate of alcohol involvement, tends to be grossly underreported and thus an unreliable measure of program effect. Even for fatally injured drivers, BAC's were known for only 64 percent in 1988. Another benefit accruing from the law reported by state officials is a more complete reporting of case disposition and more expeditious handling of criminal cases, brought about in part by the incentive created by the law for defendants to reach disposition of their criminal cases and have those dispositions reported to the Department of Public Safety.

It is clear, from the cost-benefit standpoint that adoption of an administrative *per se* law in Mississippi has been a cost-effective action.

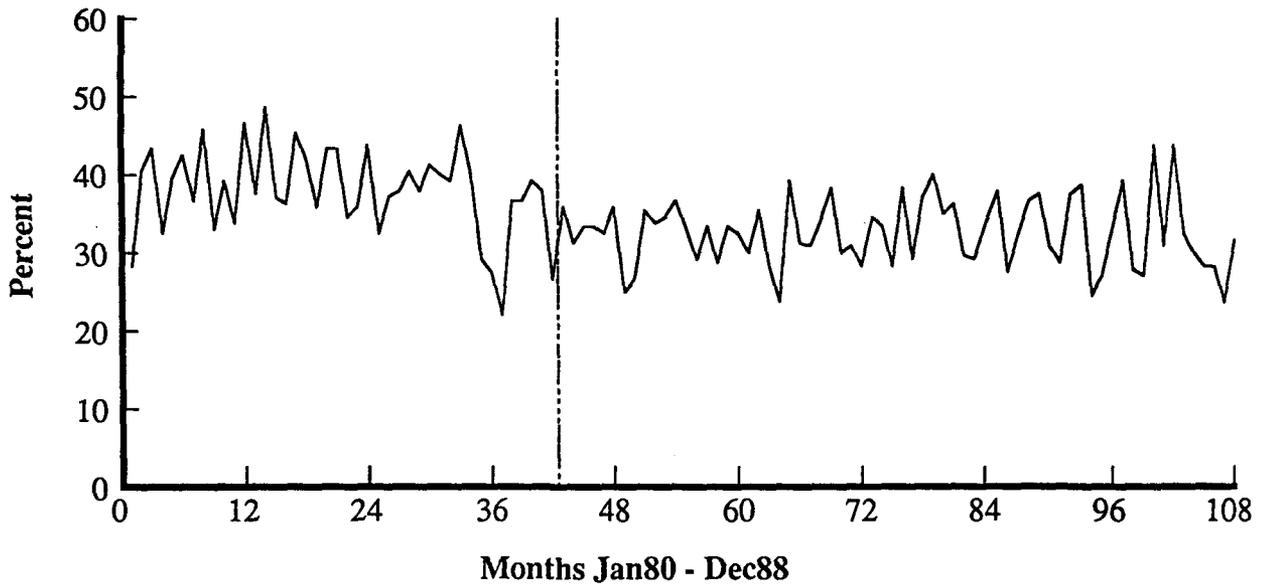


Figure 3.5. Mississippi nighttime crash costs as a percent of total crash costs.

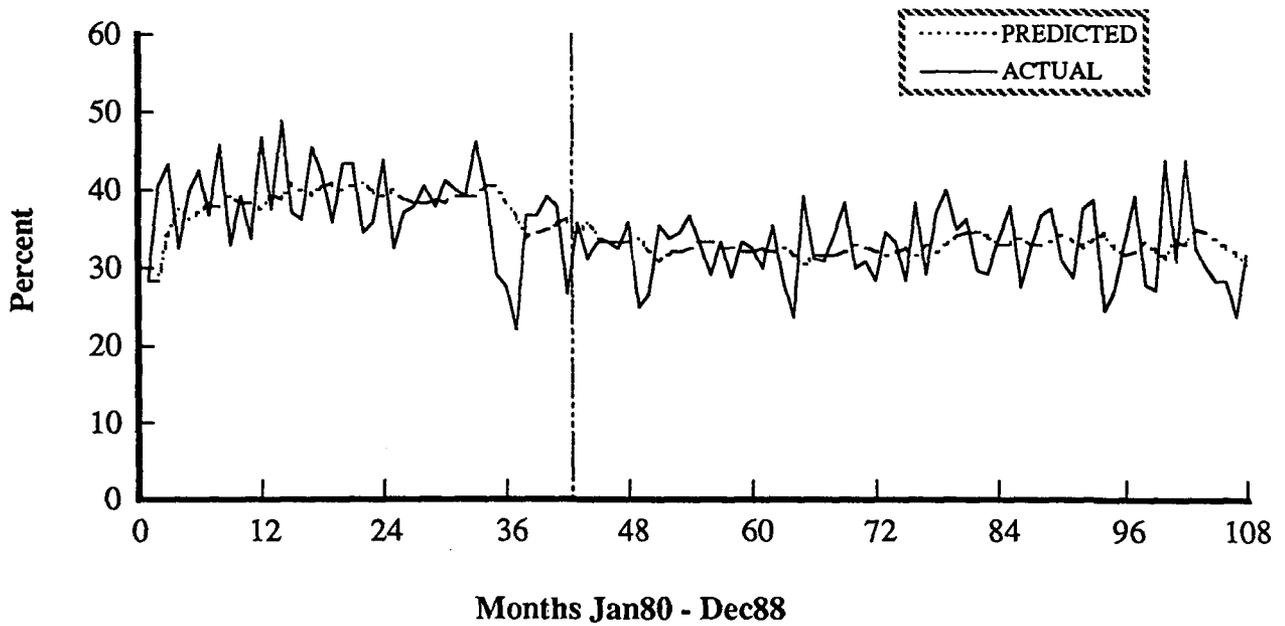


Figure 3.6. Mississippi nighttime cost percents- Actual and Fitted Values from Model with Stochastic Level.

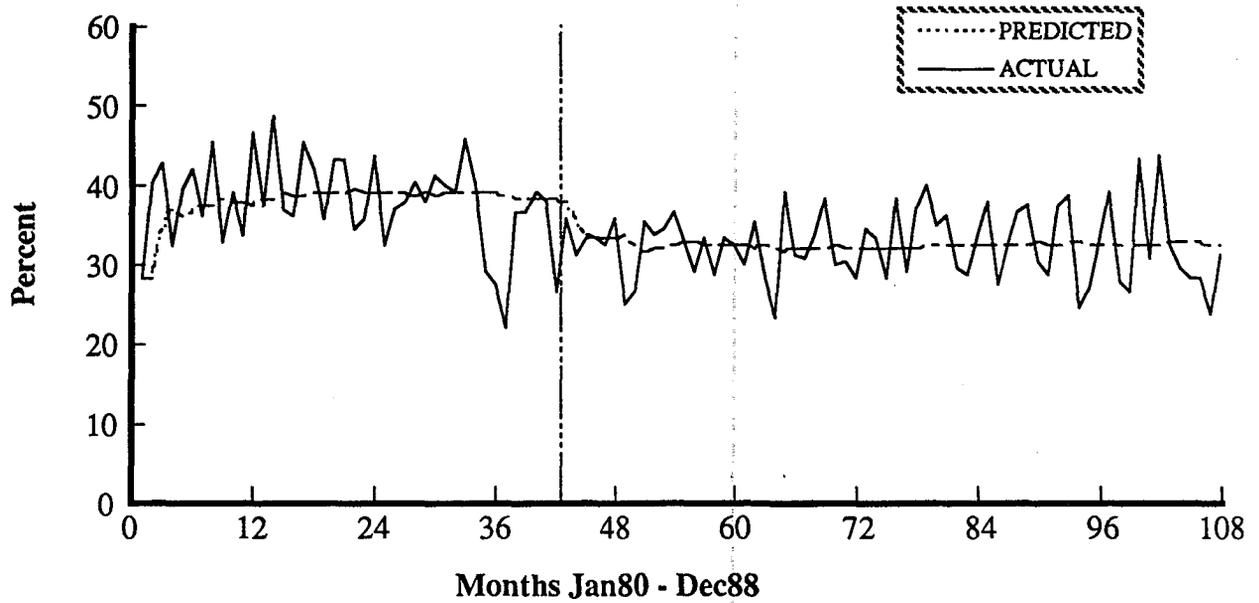


Figure 3.7. Mississippi Nighttime cost percents- Actual and Fitted Values from Model with Fixed Level.

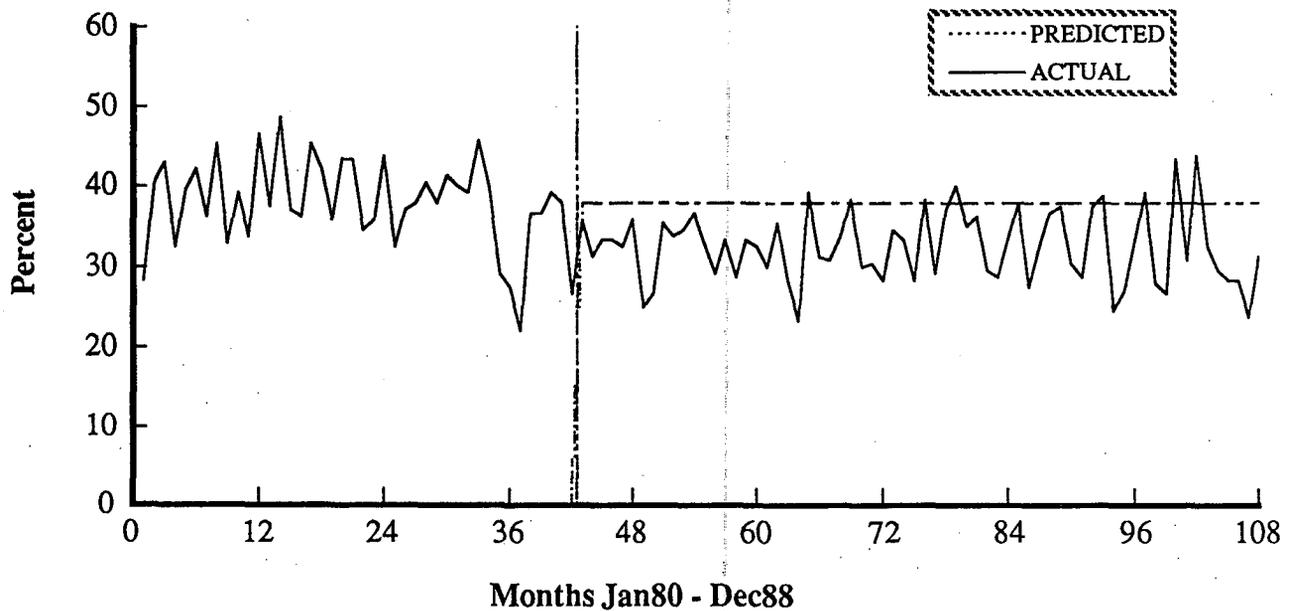


Figure 3.8. Mississippi actual and Predicted values of nighttime cost percents.

CHAPTER 4 - COSTS AND BENEFITS IN ILLINOIS

This chapter contains a description of the statutory summary suspension process as dictated by Illinois' law, followed by a description of the costs identified with start-up for implementation of the law and the annual costs for implementation of the law. This is followed by a discussion of the financial benefits accruing due to the law as indicated by direct revenues through license reinstatement fees, transfer payments in the form of federal incentive grant income and societal benefits due to decreased crash costs.

THE STATUTORY SUMMARY SUSPENSION PROCESS

Illinois implemented its statutory summary suspension law effective January 1, 1986. Illinois' statutory summary suspension process is comprised of the following steps:

- Following the arrest for DUI, the driver either refuses to submit to chemical testing to determine blood alcohol concentration or submits to such testing which shows a result of 0.10 or greater. As of July 1, 1990, there is also a statutory summary suspension for any amount of cannabis or controlled substance.
- The arresting police officer informs the offender (gives written notice) that his driving privileges will be suspended beginning 46 days after arrest as follows:
 - First Offender - 6 months for the driver who refuses to submit to testing.
 - 3 months for the driver who submits to testing which results in a blood alcohol concentration of 0.10 or greater.
 - Second Offender - A 12-month suspension is imposed in each case. As of September 21, 1989, refusal results in a 24-month suspension.
- The officer takes the driver's license and issues a receipt (which will allow driving until the statutory summary suspension is in effect). The driver's license is forwarded to the Court. If the driver has a foreign state license in his/her possession, it is not confiscated but is retained by the driver.

- The officer provides the driver with a copy of his sworn report indicating that the person was arrested and notice was given regarding the statutory summary suspension. A copy is also forwarded to the Circuit Court of Venue with the driver's license and the Secretary of State's Office.

This information is placed on file in the Secretary of State's Office and the driver's license suspension becomes effective 46 days after arrest. The Secretary of State's Office sends a confirmation of the suspension's effective date to the violator and to the Court of Venue.

The driver may request a judicial hearing which must be held within 30 days following receipt of written request or on the first appearance date of the uniform traffic ticket (at the discretion of the Court). There is no stay of the statutory suspension pending the hearing. During this hearing, the court will consider the following specific issues:

- Whether the person was placed under arrest for DUI;
- Whether there were reasonable grounds to believe the person was driving or in physical control of the vehicle upon the public highway while under the influence of alcohol, other drugs, or a combination thereof, at the time of arrest;
- Whether, after being advised of the statutory summary suspension, the driver did refuse or failed to complete a chemical test(s), or;
- Whether, after being advised of the statutory summary suspension, the driver did submit to a chemical test(s) which indicated a BAC of 0.10 or more.

If the Court determines that the suspension should be rescinded, the suspension will be removed upon receipt of a Hearing Disposition from the Court of Venue.

Regardless of whether a judicial hearing is requested, the first offender may request a judicial driving permit from the Court of Venue. The judicial driving permit shall not become effective prior to the 31st day of the statutory summary suspension and shall always be subject to the following criteria:

- Purposes of employment, i.e., to and from work and/or within the scope of the petitioner's employment related duties.
- To allow transportation for the petitioner or a household member of the petitioner's family to receive alcohol or other drug treatment, or medical care.
- To allow transportation for educational purposes (as of September 21, 1989).

- A certified letter of employment must be filed with the Court.
- A current professional evaluation of a person's alcohol or other drug use must be secured by the petitioner and reviewed by the court before a JDP can be granted.

A second offender or subsequent offender must seek a Restricted Driver Permit from the Secretary of State's Office which shall not become effective prior to the 91st day of the suspension.

The court may issue a Court Order directing the Secretary of State's Office to issue a Judicial Driving Permit. The Court must specify the specific days of the week, specific hours of the day and other limits regarding when the petitioner is allowed to operate a motor vehicle. A driving abstract will be forwarded to the Court of Venue reflecting the Judicial Driving Permit has been issued. If the Judicial Driving Permit Court Order does not meet the statutory requirements, the Secretary of State's Office will return it to the Court.

At the end of the Statutory Summary Suspension period, the petitioner is reinstated upon receipt of a properly completed Transmittal of Fee or Disqualification Order form and a \$60.00 (\$30.00 prior to 1/1/89) reinstatement fee which is collected by the Court. The reinstatement fee must be received by the Secretary of State's office before driving privileges can be restored to the person.

In tandem with this process, the DUI charge is prosecuted and adjudicated in the Circuit Court. Upon conviction, penalties are applied, including a driver's license revocation. However, any period served on statutory summary suspension is credited to the one year minimum revocation period.

A copy of Illinois' DUI laws and basic forms used in the statutory suspension process appears as Appendix D.

START-UP COSTS

This section contains a discussion of the specific start-up costs that were identified as associated with implementing administrative *per se* in Illinois. They are presented in the same basic sequence as described in the introductory chapter.

Training - Illinois conducted 20 training sessions for police and court personnel around the state in preparation for implementation of the statutory summary suspension law. Costs associated with this included \$25,000 for contractual services for production of training videotapes and printed matter such as manuals. Additional training costs were \$6,000 for travel by the trainers. Existing personnel conducted the training at no additional cost. Thus total training costs amounted to \$31,000.

Legal Advice - Existing expertise within the Secretary of State's office was used to offer guidance as to the proper implementation of the law with no identifiable additional cost.

Forms Development - Costs associated with designing the new forms associated with statutory summary suspension were negligible and handled with existing personnel at no additional cost.

Facility Costs - Though no additional facilities were required, some additional one time expenses in terms of office equipment were necessary. A total of \$8,424 was expended in this area.

Computer Programming Costs - Though changes to the computer program were accommodated using existing resources, it was necessary to purchase additional computer equipment in the form of terminals and printers in the amount of \$42,720.

In summary, the Illinois system was able to fairly readily accommodate statutory summary suspension since it required no additional hearings on the part of the Secretary of State's office because hearings on appeals of the summary suspension were heard within the court system and it basically required only training existing court and enforcement personnel in preparing to handle an increased volume of suspension activity. Total identified start-up costs for Illinois were \$82,144.

ANNUAL OPERATING COSTS

This section contains a discussion of the additional annual costs associated with the actual implementation of statutory summary suspension in Illinois and again follows the basic format presented in the introduction.

Driver Licensing Personnel Costs - The Driver Control Division required substantial additional clerical personnel (14 positions) as well as five Driver Services Technicians (persons authorized to sign off on Summary Suspension notices) to handle the increased volume of paperwork associated with recording and mailing notice of suspensions to offenders. They are supplemented by nighttime temporary data entry personnel as well. Total annual personnel costs for this activity amount to \$435,529.

Forms Reproduction, Office Supplies and Mailing Costs - The costs associated with these cost elements, as well as computer equipment maintenance, were \$60,412.

Hearings Office Costs - Hearings are handled through the criminal court system and thus there are no additional hearings office costs.

Court Costs - The Cook County States Attorney's office employs an additional seven Assistant States Attorneys at an annual cost of \$205,821 to accommodate additional workload brought on by arguing hearings of appeals of Statutory Summary Suspensions. Five of those attorneys are located in the Chicago Traffic Court and the others work at suburban court locations. The clerk's office of the Chicago City Traffic Court also increased staff to accommodate additional work associated with processing statutory summary suspensions. Six additional positions were created to accommodate a restructuring of the courtroom allocations partly done to accommodate hearings of appeals of statutory summary suspensions. It is estimated that half of that additional capability was required by the new law at an annual cost of \$68,109. A separate file room for statutory summary suspension records was also set up at the Chicago City Traffic Court facility using existing staff and resources. This traffic court is by far the largest in the state and the one most likely to be sensitive to changes in the law of this magnitude. Queries were also made of a medium sized and small county court system about the impact of the law and they indicated that they had accommodated any additional workload using existing resources.

Police Time - Though some minimal time is associated with filling out forms at the time of arrest and additional time is required of officers to appear at hearings appealing the statutory summary suspension, it was a consensus that the lessened incentive to contest the criminal case because of already imposed licensing sanctions realized enough efficiencies in the use of the officers' time to offset any additional time required by issuing initial notice and appearing at hearings.

In a state as large as Illinois and a county as large as Cook, the sheer volume of paperwork associated with implementing a law, which requires additional notices to be sent to offenders and offers the opportunity to request additional hearings, makes such changes more apparent than in smaller jurisdictions. It is estimated that the total annual cost of those changes is \$769,871.

REVENUES

There are two forms of additional revenue to the state arising from statutory summary suspension in Illinois. These are a license reinstatement fee of \$60 charged to each person reinstating their license and eligibility for transfer payments in the form of Federal Title 408 incentive grants.

License Reinstatement Fees - In Illinois, the license reinstatement fee for statutory summary suspension offenders as of January 1, 1989 is \$60. Previously that fee was \$30, all of it designated for the road fund. The current fee is half earmarked for the road fund and half for drunk and drugged driver prevention activities. In 1989, revenues from those reinstatement fees totalled \$1,645,590.

Title 408 Grant Funds - Illinois is eligible for these Federal incentive funds largely due to the summary suspension law and is receiving \$2,324,123 annually for a period of five years. These monies, in a technical sense, may not be considered benefits to society because they are monies already in governmental hands. Thus they are technically transfer payments. However, for state program administrators they represent a very real source of funds that would otherwise not be available to that state.

ECONOMIC BENEFITS FROM REDUCED CRASHES

Motor vehicle crash data were obtained from the State of Illinois where the statutory summary suspension law became effective January 1, 1986. Monthly crash frequencies were obtained for the time period January 1983 - December 1988. Crashes were again classified as nighttime crashes and alcohol-related crashes. Crash severity, however, could only be obtained classified by three levels: fatal, injury, and property damage only. Thus, it was necessary to develop a cost estimate for an injury accident. A breakdown of yearly injury crash frequencies by KABCO levels A, B, and C was obtained for the years 1985-1988. Based on the combined crash frequencies for these four years, 21.2% of the injury crashes were at level A, 32.8% at level B, and 46.0% at level C. Injury crash cost was then calculated as

$$\begin{aligned} \text{Injury crash cost} &= .212 (100,569) + .328 (22,359) \\ &+ .46 (14,393) = \$35,275 \end{aligned}$$

using the cost values for each category of injury as shown in the table in the introduction. Using this figure for injury crash cost along with the costs for fatal and property damage crashes, monthly crash costs were generated for all crashes, nighttime crashes, and alcohol-related crashes.

Figures 4.1 and 4.2 show plots of total crash costs and nighttime crash costs, respectively, while Figure 4.3 shows nighttime crash costs as a percent of total crash costs. Both total and nighttime costs appear to be quite seasonal. Total costs seem to be generally increasing over time while nighttime costs seem to be more stable. In percent form, nighttime costs are generally decreasing and some of the seasonality, especially the summer peaks, are missing in the last few years. While the level of this series seems generally lower following the intervention point (January 1986), an abrupt decrease in level at the intervention point is not apparent from Figure 4.3.

Figure 4.4 shows forecasted nighttime cost percents (along with actual values) based on a model fit to the 1983-1985 data. The forecasted percents were then used to generate forecasts of monthly nighttime crash costs. Comparison of the forecasted or predicted nighttime costs with actual nighttime costs over the three year period 1986-1988 resulted in an estimated cost reduction of \$269.3 million or \$89.8 million per year. It seems clear that the overall level of nighttime crash costs

relative to all crash costs was generally lower in the period 1986-1988 than it had been in the 1983-1985 period. Associating this decrease with the intervention point of January 1986, however, does not seem so clear. This is sometimes the case with laws of this nature where the public discussion leading to introduction of the law (in Illinois a statewide task force held hearings) and the media coverage of the legislative deliberations of the law heighten public awareness before the actual effective date of the law. That may well have been the case in Illinois. Nonetheless, it is reasonable to conclude from the substantial cost savings in the period after implementation of the law, that the law had a beneficial effect.

The classification of a crash as being alcohol related was begun in Illinois in 1985 and officer familiarization with the process evidently was phased in over time. Additionally, changes in data entry procedures led to abrupt changes in reporting of alcohol involvement in fatal crashes in late 1988. Because the resulting time series data was so brief and erratic in nature, it was not useful for the purposes of this project.

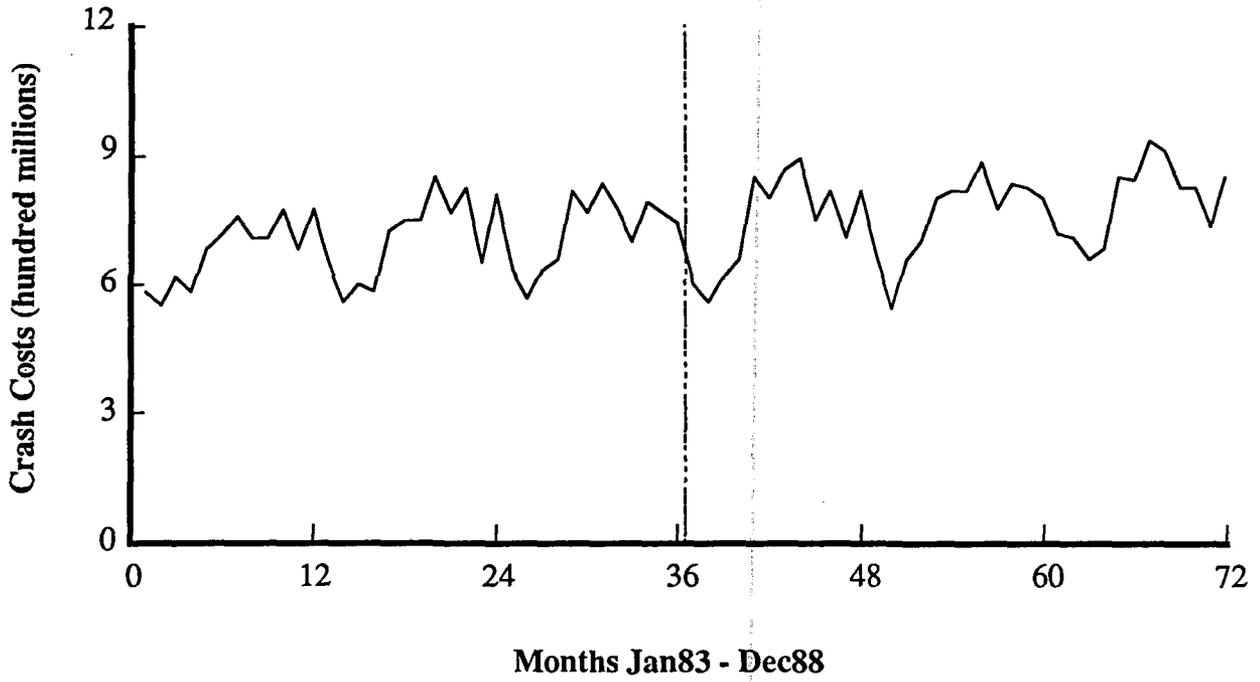


Figure 4.1 Illinois total crash costs by month.

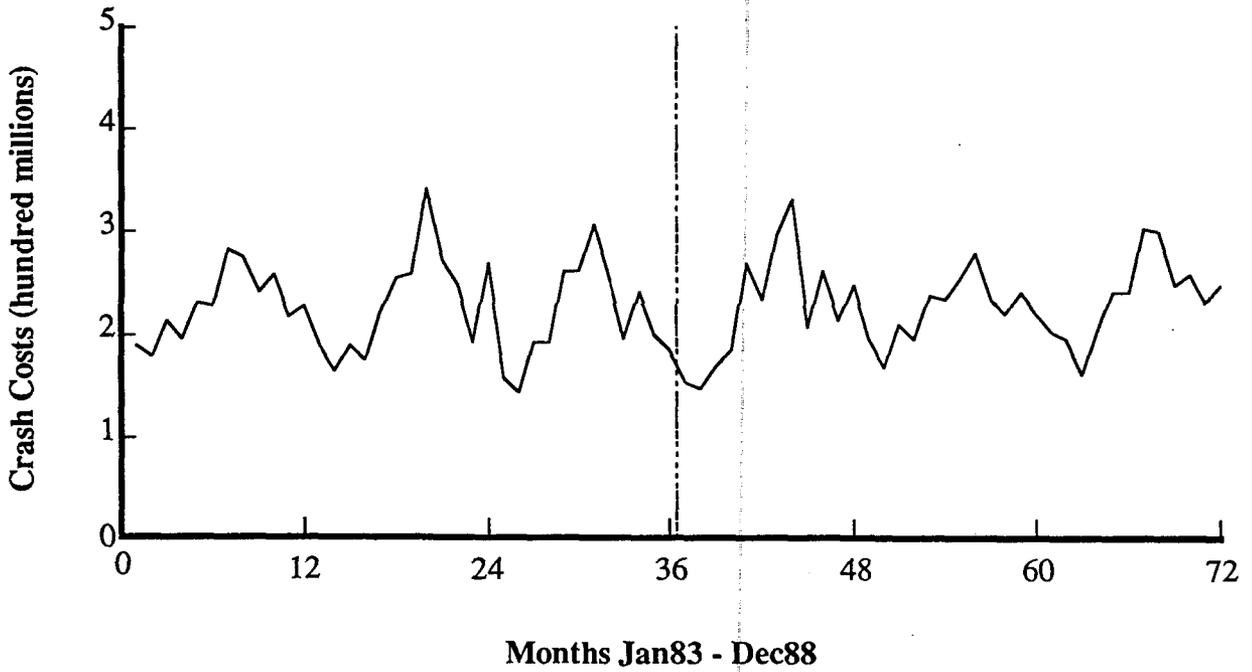


Figure 4.2 Illinois nighttime crash costs by month.

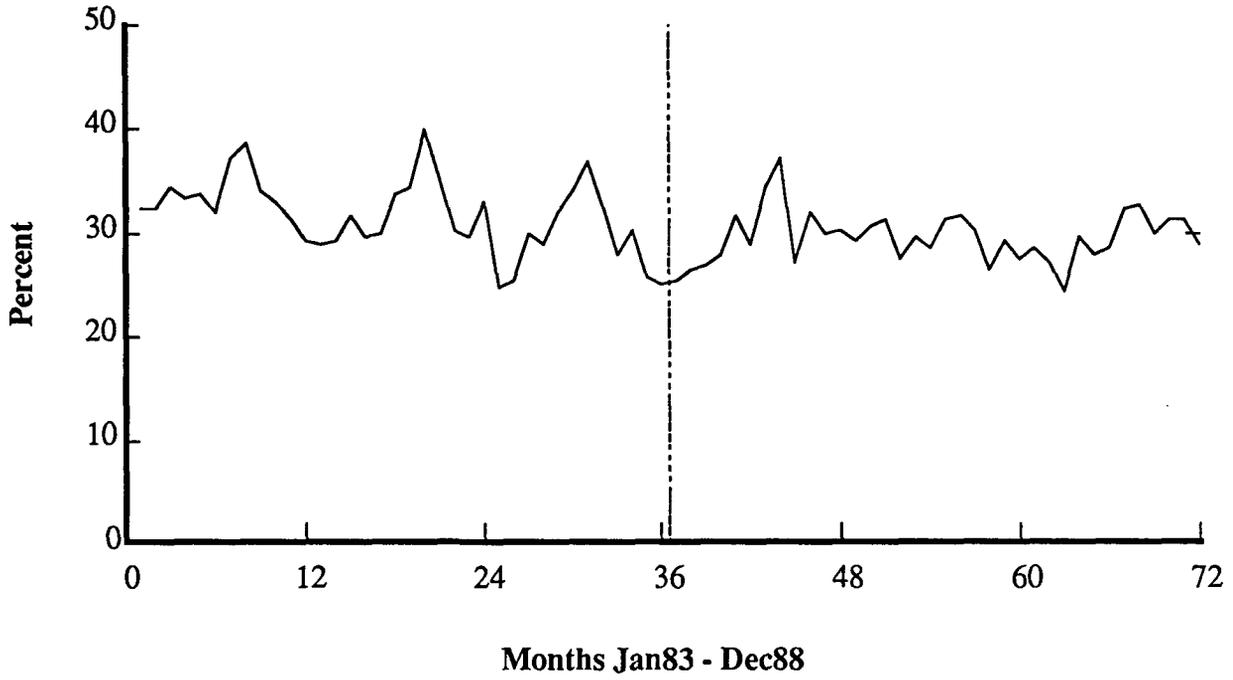


Figure 4.3 Illinois nighttime crash costs as a percent of total crash costs.

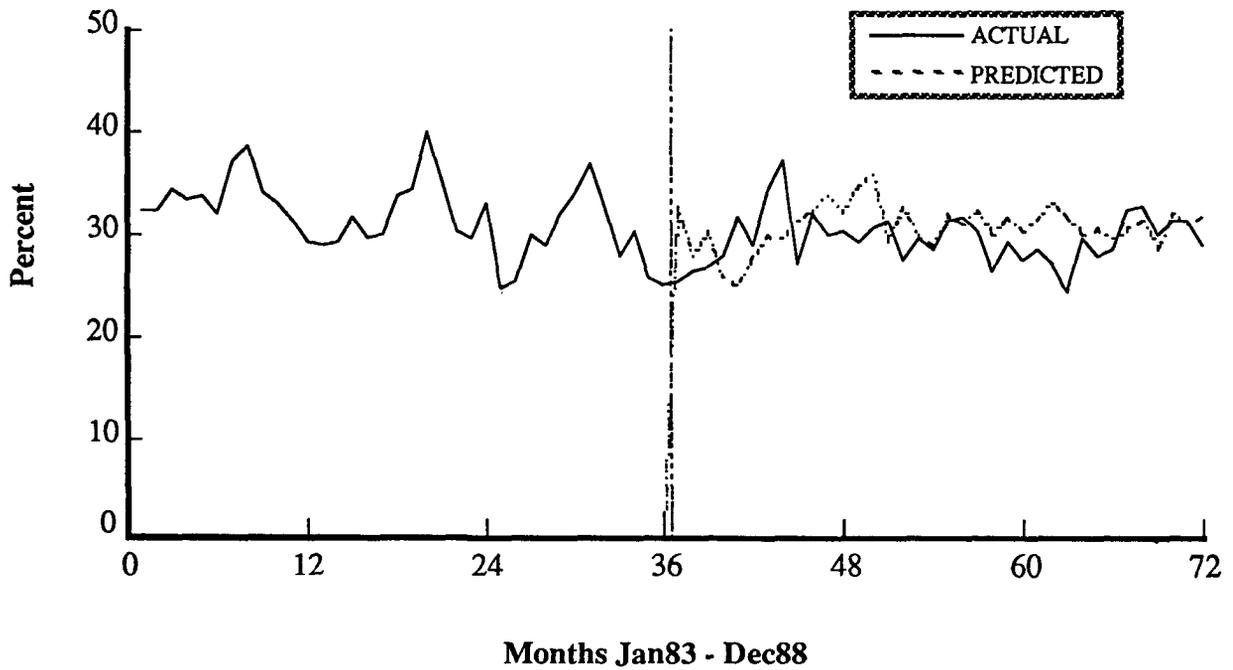


Figure 4.4 Illinois actual and predicted nighttime cost percents.

SUMMARY AND CONCLUSIONS

The overall identified start-up and annual implementation costs for Statutory Summary Suspension are listed in the following table along with identified monetary benefits both in terms of actual revenues and societal benefits.

**Economic Costs and Benefits Associated with Adoption of
Statutory Summary Suspension in Illinois**

| | |
|--|-----------------|
| Direct Costs | |
| Start-up Costs | \$ 82,144 |
| Annual Operating Costs | 769,871 |
| Direct Benefits | |
| Annual Reinstatement Fee Income | 1,645,590 |
| Transfer Payments | |
| Annual 408 Funds (5-year limit) | 2,324,123 |
| Societal Benefits (nighttime and alcohol crash benefits are not additive) | |
| Annual Savings in Alcohol- Related Crash Costs | None calculated |
| Annual Savings in Nighttime Crash Costs | 89,000,000 |

Examination of the table above reveals that direct revenues to the state through license reinstatement fees more than offset the increased annual costs associated with program implementation. In a state as large as Illinois, the existing system may be less able to absorb additional work caused by a statute revision of this nature and thus may incur substantial costs implementing the program. However, it is worthy of note that the additional direct revenues from license reinstatement actions have more than offset these costs. Additionally, the viability of the state's highway safety program was further enhanced by the law by helping attain eligibility for transfer payments in the form of 408 funding which amounts to \$2,324,123 per year for up to five years. However, perhaps of even more compelling interest is the societal benefit in terms of reduced crash costs, using nighttime crashes as a proxy for alcohol-related crashes. Unfortunately, the more direct measure of alcohol involvement, officers' subjective estimate of alcohol involvement, has not been reported long enough or with enough stability to be useful to this analysis.

From the cost-benefit standpoint, it is clear that adoption of the Statutory Summary Suspension law in Illinois has been a cost-effective action.

CHAPTER 5 - CONCLUSIONS AND RECOMMENDATIONS

The preceding three chapters have detailed identifiable costs and quantifiable benefits accruing to three states that have implemented administrative license suspension or revocation laws. The states represent a wide range of sizes, geographical regions and approaches to implementing an administrative *per se* program. As can be seen from the table on the next page, there are variations in costs associated with starting and then operating such a program. Nevertheless, the consistent relationship is that the annual economic benefit due to direct revenues alone outweighs the annual costs of operating an administrative *per se* system. When the economic benefits due to a reduction in traffic crashes are added, benefits outweigh costs by greater than 100 to one.

Not all of the statewide economic costs and benefits from adopting administrative *per se* could be determined in this study, simply because states do not routinely collect the kinds of cost data needed for cost-benefit analyses of specific legislation. Similarly, the benefits in terms of reduced crash costs are clearly estimates. The most reliable estimates are based on changes in nighttime crash patterns. As indicated, nighttime crashes are not all alcohol-related nor do they include all alcohol-related crashes. However, they do provide the best available metric for estimating crash-cost changes due to legislative initiatives of this nature. Another caution is that the changes observed may not be entirely due to the adoption of administrative *per se* laws alone since in each state the new legislation contained changes in other, less visible aspects of drunk driving legislation. However, the consistency of results and magnitude of the effects observed with the conservative measures used gives credence to the societal benefits associated with implementation of administrative *per se*.

In the face of the existing body of evidence that license suspension is the single most effective sanction in reducing DWI recidivism, that well publicized administrative license suspension laws contribute to general deterrence of DWI, and that the courts accept the legal premise of administrative license revocation, the only remaining reasonable objection to their adoption is that financial resources may not be available to defray startup costs before revenues from reinstatements begin to be received. Florida, in its recent legislation authorizing administrative license revocation, provided an innovative solution to that potential problem. Florida provided for a license reinstatement fee for DWI convictions for a period preceding implementation of administrative revocation to be placed in a special fund to defray start up costs for the administrative procedures. Other solutions to this problem could no doubt be found.

We unequivocally recommend that states which do not yet have an administrative license revocation law give serious consideration to enacting one.

**Comparison of Economic Costs and Benefits of
Administrative Per Se in Nevada, Mississippi, and Illinois**

| <u>Category</u> | <u>Nevada</u> | <u>Mississippi</u> | <u>Illinois</u> |
|--|---------------|--------------------|-----------------|
| Direct Costs | | | |
| Start-up Costs | None Found | 1,200 | 82,144 |
| Annual Operating Costs | 200,787 | 54,914 | 769,871 |
| Direct Benefits | | | |
| Annual Reinstatement Fee Income | 284,000 | 118,288 | 1,645,590 |
| Transfer Payments | | | |
| Annual 408 Funds (5-year Limit) | 273,488 | 646,055 | 2,324,123 |
| Societal Benefits (nighttime and alcohol crash benefits are not additive) | | | |
| Annual Savings in Alcohol-Related Crashes | 57,638,364 | None calculated | None calculated |
| Annual Savings in Nighttime Crash Costs | 37,118,292 | 104,328,024 | 89,000,000 |

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APPENDIX A

TIME SERIES ANALYTIC APPROACH

Appendix A. Time Series Analytic Approach

The time series analyses described in this report were carried out using the computer program STAMP (Structural Time Series Analysis and Modelling Package), obtained from ESRC Centre in Economic Computing, London School of Economics. The formulation of a time series as a structural model follows that of Harvey, A.C. and Durbin, J. (1986).

The underlying concept is that an observed time series can be decomposed as the sum of a trend component, a seasonal (or cyclic component) and a random component, but that both the trend and seasonal components can change over time rather than being fixed effects. The trend component is further composed of a level and a slope. A very simple model can be written as

$$\begin{aligned} y_t &= \mu_t + \epsilon_t \quad , \\ \mu_t &= \mu_{t-1} + \eta_t \end{aligned} \quad (1)$$

where y_t is the observed series at time t , μ_t is the level of the series at time t , and ϵ_t is a random component assumed to have mean zero and variance $\sigma\epsilon^2$. The level μ_t at time t is further given as the level at time $t-1$ plus a second random term having mean zero and variance $\sigma\eta^2$. Note that if $\sigma\eta^2 = 0$ then $\mu_t = \mu_{t-1}$ and (1) simply represents a model of random variation about a constant level or mean value. A slope component can be added to the trend to give

$$\begin{aligned} y_t &= \mu_t + \epsilon_t \quad , \\ \mu_t &= \mu_{t-1} + B_{t-1} + \eta_t \quad , \\ B_t &= B_{t-1} + \delta_t \end{aligned} \quad (2)$$

where the slope B_t at time t is the slope at time $t-1$ plus another random term having mean 0 and variance $\sigma\delta^2$. The full model could also contain a seasonal component τ_t with period S , where

$$\sum_{j=0}^{S-1} \tau_{t-j} = \phi_t \quad \text{where } \phi_t \text{ is}$$

a random term with mean zero and variance $\sigma\phi^2$.

This basic model can be extended to include regression effects due to other independent variables. This gives

$$y_t = \mu_t + \tau_t + \sum_{i=1}^K \alpha_i X_{it} + \epsilon_t, \quad (4)$$

where μ_t and τ_t are the trend and seasonal components described above and X_{1t}, \dots, X_{Kt} are K other regression variables with α_i the regression coefficient for X_{it} .

The effect of an intervention can be included in the model as a particular type of regression variable. For the cost benefit analyses intervention effects in the form of abrupt shifts in level were estimated by including in the model a regression variable of the form

$$X_t = \begin{cases} 0, & t < t_0 \\ 1, & t \geq t_0 \end{cases}$$

where the intervention occurred at t_0 . A second type of regression variable used in some of the models was,

$$X_t = y_{t-n}$$

In this case the regression coefficient α was an autoregressive coefficient of lag n.

Two types of models were fit to each data series. First a model containing an intervention variable was fit to the complete data series. The purpose of this model was to test whether or not a statistically significant shift in the level of the series occurred at the time of the intervention. Estimation of a significant shift provides evidence that a change did occur in response to the intervention.

Even though a significant intervention effect is estimated, the data series may, at later times, drift back up to or above its original level, or it may continue to decrease further, or exhibit a variety of different behaviors. Thus, the estimated intervention effect alone does not necessarily provide complete information on the behavior of the series relative to its expected behavior had there been no intervention. For this purpose a second model was fit to the data only up to the

point of intervention. This model was then used to produce a forecast of the series which could be compared with the actual series for estimating the overall difference (cost savings).

Reference

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APPENDIX B

**NEVADA DUI LEGISLATION AND FORMS FOR
IMPLEMENTATION OF ADMINISTRATIVE REVOCATION**

DUI LAW--EFFECTIVE JULY 1, 1983

CHAPTER _____

AN ACT relating to traffic violations; revising the provisions concerning driving while intoxicated; providing preliminary tests for intoxication; providing for summary revocation of drivers' licenses; providing a penalty for driving with a certain percentage of alcohol in the blood; increasing certain other penalties; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE
AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 484 of NRS is hereby amended by adding thereto the provisions set forth as sections 1, 5, 2 and 3 of this act.

Sec. 1.5. "Premises to which the public has access" means property in private or public ownership onto which the public is invited or permitted to enter for civic or commercial purposes, such as the roadway or parking lot appurtenant to a governmental building, a business, an apartment house or a mobile home park, but does not include a private way on a farm or the driveway of an individual dwelling.

Sec. 2. 1. Any person who drives or is in actual physical control of a vehicle on a highway or on premises to which the public has access shall be deemed to have given his consent to a preliminary test of his breath for the purpose of determining the alcoholic content of his blood when the test is administered at the direction of a police officer at the scene of a vehicle accident or collision or where he stops a vehicle, if the officer has an articulable suspicion that the person to be tested was driving or in actual physical control of a vehicle while under the influence of intoxicating liquor or a controlled substance.

2. The person under suspicion must be informed that his failure to submit to the preliminary test will result in the immediate revocation of his privilege to drive a vehicle.

3. If he fails to submit to the test, the officer shall seize his license or permit to drive as provided in NRS 484.385, and if reasonable grounds otherwise exist, the officer shall arrest him and take him to a convenient place for the administration of a reasonably available evidentiary test under NRS 484.383.

4. The result of the preliminary test must not be used in any criminal action, except to show there were reasonable grounds to make an arrest.

Sec. 3. 1. Except as otherwise provided in subsection 2, if a person fails to submit to an evidentiary test as directed by a police officer under NRS 484.383, his license, permit or privilege to drive must be revoked as provided in NRS 484.385 and he is not eligible for a license, permit or privilege to drive for a period of 1 year.

2. If the person who has failed to submit to such a test has had his license, permit or privilege to drive suspended or revoked for failing to submit to such a test within the immediately preceding 7 years, he is not eligible for a license, permit or privilege to drive for a period of 3 years.

3. If a person fails to submit to a preliminary test of his breath as directed by a police officer under section 2 of this act, or the result of a test given under NRS 484.383 or section 2 of this act shows that he had 0.10 percent or more by weight of alcohol in his blood at the time of the test, his license, permit or privilege to drive must be revoked as provided in NRS 484.385 and he is not eligible for a license, permit or privilege for a period of 90 days.

4. If revocation of a person's license, permit or privilege to drive under NRS 483.460 follows a revocation under subsection 3 which was based on his having 0.10 percent or more by weight of

alcohol in his blood, the department shall cancel the revocation under that subsection and give the person credit for any period during which he was not eligible for a license, permit or privilege.

5. Periods of ineligibility for a license, permit or privilege to drive which are imposed pursuant to this section must run consecutively.

Sec. 4. NRS 484.219 is hereby amended to read as follows:

484.219 1. The driver of any vehicle involved in an accident on a highway or on premises to which the public has access resulting in bodily injury to or the death of any person shall immediately stop his vehicle at the scene of the accident or as close thereto as possible, and shall forthwith return to and in every event shall remain at the scene of the accident until he has fulfilled the requirements of NRS 484.223.

2. Every such stop must be made without obstructing traffic more than is necessary.

3. Any person failing to comply with the provisions of subsection 1 shall be punished by imprisonment in the state prison for not less than 1 year nor more than 6 years, or by a fine of not more than \$5,000, or by both fine and imprisonment.

Sec. 5. NRS 484.229 is hereby amended to read as follows:

484.229 1. Except as provided in subsection 2, the driver of a vehicle which is in any manner involved in an accident on a highway or on premises to which the public has access, if the accident results in bodily injury to or the death of any person or total damage to any vehicle or item of property to an apparent extent of \$350 or more, shall, within 10 days after the accident, forward a written report of the accident to the department of motor vehicles. Whenever damage occurs to a motor vehicle, the

operator shall attach to the accident report an estimate of repairs or a statement of the total loss from an established repair garage, an insurance adjuster employed by an insurer licensed to do business in this state, an adjuster licensed under chapter 684A of NRS, or a motor vehicle physical damage appraiser licensed under chapter 684B of NRS. The department may require the driver or owner of the vehicle to file supplemental written reports whenever the original report is insufficient in the opinion of the department.

2. The driver of a vehicle subject to the jurisdiction of the Interstate Commerce Commission or the public service commission of Nevada need not submit in his report the information requested pursuant to subsection 3 of NRS 484.247 until the 10th day of the month following the month in which the accident occurred.

3. A written accident report is not required under this chapter from any person who is physically incapable of making a report, during the period of his incapacity.

4. Whenever the driver is physically incapable of making a written report of an accident as required in this section and he is not the owner of the vehicle, the owner shall within 10 days after knowledge of the accident make the report not made by the driver.

5. All written reports required in this section to be forwarded to the department by drivers or owners of vehicles involved in accidents are without prejudice to the person so reporting and are for the confidential use of the department or other state agencies having use of the records for accident prevention purposes, except that the department may disclose the identity of a person involved in an accident when his identity is not otherwise known or when he denies his presence at the accident.

6. No written report forwarded under the provisions of this section may be used as evidence in any trial, civil or criminal, arising out of an accident except that the department shall furnish upon demand of any party to such a trial, or upon demand of any court, a certificate showing that a specified accident report has or has not been made to the department in compliance with law, and, if such report has been made, the date, time and location of the accident, the names and addresses of the drivers, the owners of the vehicles involved and the investigating officers. Such a report may be used as evidence when necessary to prosecute charges filed in connection with a violation of NRS 484.236.

Sec. 6. NRS 484.259 is hereby amended to read as follows:

484.259 Unless specifically made applicable, the provisions of this chapter, except those relating to driving under the influence of controlled substances or intoxicating liquor as provided in NRS 484.379, 484.3795 and section 3 of this act, do not apply to persons, teams, motor vehicles and other equipment while actually engaged in work upon the surface of a highway but apply to such persons and vehicles when traveling to or from such work.

Sec. 7. NRS 484.376 is hereby amended to read as follows:

484.376 As used in NRS 484.377 to 484.393, inclusive, and sections 2, 3, 10 and 11 of this act, unless the context otherwise requires:

1. "Controlled substance" has the meaning ascribed to it in NRS 453.041.

2. "Substantial bodily harm" has the meaning ascribed to it in NRS 193.015.

Sec. 8. NRS 484.379 is hereby amended to read as follows:

484.379 1. It is unlawful for any person who:

(a) Is under the influence of intoxicating liquor; or

(b) Has 0.10 percent or more by weight of alcohol in his blood, to drive or be in actual physical control of a vehicle on a highway or on premises to which the public has access.

2. It is unlawful for any person who is an habitual user of or under the influence of any controlled substance, or is under the combined influence of intoxicating liquor and a controlled substance, or any person who inhales, ingests, applies or otherwise uses any chemical, poison or organic solvent, or any compound or combination of any of these, to a degree which renders him incapable of safely driving or exercising actual physical control of a vehicle to drive or be in actual physical control of a vehicle on a highway or on premises to which the public has access. The fact that any person charged with a violation of this subsection is or has been entitled to use that drug under the laws of this state is not a defense against any charge of violating this subsection.

Sec. 9. Chapter 484 of NRS is hereby amended by adding thereto the provisions set forth as sections 10 and 11 of this act.

Sec. 10. 1. Any person who violates the provisions of NRS 484.379:

(a) For the first offense within 7 years, is guilty of a misdemeanor. Unless he is allowed to undergo treatment as provided in section 11 of this act, the court shall:

(1) Order him to pay tuition for an educational course on the abuse of alcohol and controlled substances approved by the department of motor vehicles and complete the course within the time specified in the order, and the court shall notify the department if he fails to complete the course within the specified time;

(2) Unless the sentence is reduced pursuant to section 11 of this act, sentence him to imprisonment for not less than 2 days nor more than 6 months in jail, or to perform 48 hours of work for the community while dressed in distinctive garb which identifies him as having violated the provisions of NRS 484.379; and

(3) Fine him not less than \$200 nor more than \$1,000.

The teacher of the educational course shall evaluate the offender and, if he finds the offender is an abuser of alcohol or controlled substances, he shall promptly report his findings to the court for its use.

(b) For a second offense within 7 years, is guilty of a misdemeanor. Except as provided in section 11 of this act, the court shall sentence him to imprisonment for not less than 10 days nor more than 6 months in jail and fine him not less than \$500 nor more than \$1,000.

(c) For a third or subsequent offense within 7 years, shall be punished by imprisonment in the state prison for not less than 1 year nor more than 6 years and must be further punished by a fine of not less than \$2,000 nor more than \$5,000. An offender so imprisoned must be segregated insofar as practicable from offenders whose crimes were violent, and must be assigned to an institution of minimum security or, if space is available, to an honor camp, restitution center of similar facility.

2. Any offense which occurred within 7 years immediately preceding the date of the principal offense or after the principal offense constitutes a prior offense for the purposes of this section when evidenced by a conviction, without regard to the sequence of the offenses and convictions. The facts concerning a prior offense must be alleged in the complaint, indictment or information, must not be read to the jury or proved at trial but

must be proved at the time of sentencing and, if the principal offense is alleged to be a felony, must also be shown at the preliminary examination or presented to the grand jury.

3. No person convicted of violating the provisions of NRS 484.379 may be released on probation, and no sentence imposed for violating those provisions may be suspended. No prosecuting attorney may dismiss a charge of violating the provisions of NRS 484.379 in exchange for a plea of guilty or nolo contendere to a lesser charge or for any other reason unless he knows or it is obvious that the charge is not supported by probable cause or cannot be proved at the time of trial.

4. Any term of confinement imposed under the provisions of this section may be served intermittently at the discretion of the judge or justice of the peace, except that a person who is convicted of a second or subsequent offense within 7 years must be confined for at least one segment of not less than 48 consecutive hours. This discretion must be exercised after considering all the circumstances surrounding the offense, and the family and employment of the offender, but any sentence of 30 days or less must be served within 6 months from the date of conviction or within 6 months after the date of sentencing if the offender underwent treatment pursuant to section 11 of this act. Any segment of time for which the offender is confined must consist of not less than 24 consecutive hours.

5. Jail sentences simultaneously imposed under this section and NRS 483.560 or 485.330 must run consecutively.

6. As used in this section, unless the context otherwise requires, "offense" means a violation of NRS 484.379 or 484.3795 or homicide resulting from the driving of a vehicle while under the influence of intoxicating liquor or a controlled substance, or

the violation of a law of any other jurisdiction which prohibits the same conduct.

Sec. 11. 1. A person who is found guilty of a first or second violation of NRS 484.379 within 7 years may, at that time or any time until he is sentenced, apply to the court to undergo a program of treatment for alcoholism or drug abuse for at least 1 year if:

(a) He is classified as an alcoholic or abuser of drugs by a:

(1) Counselor certified to make that classification by the bureau of alcohol and drug abuse of the rehabilitation division of the department of human resources; or

(2) Physician certified to make that classification by the state board of medial examiners;

(b) He agrees to pay the costs of the treatment; and

(c) He has served or will serve a term of imprisonment in jail of:

(1) One day, or has performed or will perform 24 hours of work for the community, if it is his first offense within 7 years; or

(2) Five days if it is his second offense within 7 years.

2. A prosecuting attorney has 10 days after receiving notice of an application for treatment pursuant to this section in which to request a hearing on the matter. The court shall order a hearing on the application if the prosecuting attorney requests it or may order a hearing on its own motion.

3. At the hearing on the application for treatment the prosecuting attorney may present the court with any relevant evidence on the matter. If a hearing is not held, the court shall decide the matter upon affidavits and other information before it.

4. In granting an application for treatment the court shall advise the offender that:

(a) Final sentencing in his case will be postponed.

(b) If he is accepted for treatment by a facility approved by the state, he may be placed under the supervision of the facility for a period not to exceed 3 years and during treatment he may be confined in an institution or, at the discretion of the facility, released for treatment or supervised aftercare in the community.

(c) If he is not accepted for treatment by such a facility or fails to complete the treatment satisfactorily, he must be sentenced to the fine and imprisonment to which he would have been sentenced had he not been allowed treatment. The sentence of imprisonment must be reduced by a time equal to that which he served before beginning treatment.

(d) If he completes the treatment satisfactorily, he may not be sentenced to a term of imprisonment which is longer than that provided for the offense in paragraph (c) of subsection 1 or fined more than the minimum provided for the offense in section 10 of this act, but the conviction remains on his record of criminal history.

5. The court shall administer the program of treatment pursuant to the procedures provided in NRS 458.320 and 458.330, except that the court shall not defer the sentence or set aside the conviction.

6. The court shall notify the department, on a form approved by the department, upon granting the offender's application for treatment and his failure to be accepted for or complete treatment.

Sec. 12. NRS 484.3795 is hereby amended to read as follows:

484.3795 1. Any person who, while under the influence of

intoxicating liquor or with 0.10 percent or more by weight of alcohol in his blood, or while under the influence of a controlled substance, or under the combined influence of intoxicating liquor and a controlled substance, or any person who inhales, ingests, applies or otherwise uses any chemical, poison or organic solvent, or any compound or combination of any of these, to a degree which renders him incapable of safely driving or exercising actual physical control of a vehicle, does any act or neglects any duty imposed by law while driving or in actual physical control of any vehicle on or off the highways of this state, if the act or neglect of duty proximately causes the death of, or substantial bodily harm to, any person other than himself, shall be punished by imprisonment in the state prison for not less than 1 year nor more than 6 years and must be further punished by a fine of not less than \$2,000 nor more than \$5,000. A person so imprisoned must be segregated insofar as practicable from offenders whose crimes were violent, and must be assigned to an institution of minimum security or, if space is available, to an honor camp, restitution center or similar facility.

2. No prosecuting attorney may dismiss a charge of violating the provisions of subsection 1 in exchange for a plea of guilty or nolo contendere to a lesser charge or for any other reason unless he knows or it is obvious that the charge is not supported by probable cause or cannot be proved at the time of trial. A sentence imposed pursuant to subsection 1 may not be suspended nor may probation be granted.

Sec. 13. NRS 484.381 is hereby amended to read as follows:

484.381 1. In any criminal prosecution for a violation of NRS 484.379 or 484.3795 in which it is alleged that the defendant was driving or in actual physical control of a vehicle while he

had 0.10 percent or more by weight of alcohol in his blood, the amount of alcohol shown by a chemical analysis of his blood, urine, breath or other bodily substance is presumed to be no less than the amount present at the time of the alleged violation.

2. In any criminal prosecution for a violation of NRS 484.379 or 484.3795 or for homicide relating to driving a vehicle, in which it is alleged the defendant was driving or in actual physical control of a vehicle while under the influence of intoxicating liquor, the amount of alcohol in the defendant's blood at the time of the test as shown by chemical analysis of the defendant's blood, urine, breath or other bodily substance gives rise to the following presumptions:

(a) If there was at that time 0.05 percent or less by weight of alcohol in the defendant's blood, that at the time of the alleged violation the defendant was not under the influence of intoxicating liquor.

(b) If there was at that time more than 0.05 percent but less than 0.10 percent by weight of alcohol in the defendant's blood, no presumption that at the time of the alleged violation the defendant was or was not under the influence of intoxicating liquor, but this fact may be considered with other competent evidence in determining the guilt or innocence of the defendant.

(c) If there was at that time 0.10 percent or more by weight of alcohol in the defendant's blood, that at the time of the alleged violation the defendant was under the influence of intoxicating liquor.

3. The provisions of subsection 2 do not limit the introduction of any other competent evidence bearing upon the question whether or not the defendant was under the influence of intoxicating liquor.

Sec. 14. NRS 484.383 is hereby amended to read as follows:

484.383 1. Except as provided in subsections 4 and 5, any person who drives or is in actual physical control of a vehicle on a highway or on premises to which the public has access shall be deemed to have given his consent to an evidentiary test of his blood, urine, breath or other bodily substance for the purpose of determining the alcoholic content of his blood or the presence of a controlled substance when such a test is administered at the direction of a police officer having reasonable grounds to believe that the person to be tested was driving or in actual physical control of a vehicle while under the influence of intoxicating liquor or a controlled substance.

2. The person to be tested must be informed that his failure to submit to the test will result in the revocation of his privilege to drive a vehicle.

3. Any person who is dead, unconscious, or otherwise in a condition rendering him incapable of refusal shall be deemed not to have withdrawn his consent, and any such test may be administered whether or not the person is informed that his failure to submit to the test will result in the revocation of his privilege to drive a vehicle.

4. Any person who is afflicted with hemophilia or with a heart condition requiring the use of an anticoagulant as determined by a physician is exempt from any blood test which may be required pursuant to this section.

5. Where the alcoholic content of the blood of the person to be tested is in issue, he may refuse to submit to a blood test if means are reasonably available to perform a breath or urine test, and may refuse to submit to a blood or urine test if means are reasonably available to perform a breath test. If the person

requests a blood or urine test and the means are reasonably available to perform a breath test, and he is subsequently convicted, he must pay for the cost of the substituted test, including the fees and expenses of witnesses in court.

6. Where the presence of a controlled substance in the blood of the person is in issue, the officer may direct him to submit to a blood or urine test, or both, in addition to the breath test. The officer shall inform him that his failure to submit to either or both of the blood or urine tests, as required, will result in the revocation of his privilege to drive a vehicle. A failure to submit to either or both of these tests constitutes a failure to submit to one test under this section.

7. If a person to be tested fails to submit to a required test as directed by a police officer under this section, none may be given, except that if the officer has reasonable cause to believe that the person to be tested was driving or in actual physical control of a motor vehicle while under the influence of intoxicating liquor or a controlled substance and thereby caused death or substantial bodily harm to another, the officer may direct that reasonable force be used to the extent necessary to obtain a sample of blood from the person to be tested.

Sec. 15. NRS 484.385 is hereby amended to read as follows:

484.385 1. As agent for the department, the officer who directed that a test be given under NRS 484.383 or section 2 of this act or who obtained the result of such a test shall immediately serve an order of revocation of the license, permit or privilege to drive on a person who fails to submit to the test or has 0.10 percent or more by weight of alcohol in his blood, if that person is present, and shall seize his license or permit to drive. The officer shall then advise him of his right to admi-

nistrative and judicial review of the revocation and to have a temporary license, and shall issue him a temporary license on a form approved by the department if he requests one, which is effective for only 7 days including the date of issuance. The officer shall immediately transmit the person's license or permit to the department along with the written certificate required by subsection 2.

2. When a police officer has served an order of revocation of a driver's license, permit or privilege on a person pursuant to subsection 1, or later receives the result of an evidentiary test which indicates that a person, not then present, had 0.10 percent or more by weight of alcohol in his blood, the officer shall immediately prepare and transmit to the department, together with the seized license or permit and a copy of the result of the test, if any, a written certificate that he had:

(a) An articulable suspicion that the person had been driving or in actual physical control of a vehicle while under the influence of intoxicating liquor or a controlled substance and that the person refused to submit to a required preliminary test;

(b) Reasonable grounds to believe that the person had been driving or in actual physical control of a vehicle while under the influence of intoxicating liquor or a controlled substance and the person refused to submit to a required evidentiary test; or

(c) Reasonable grounds to believe that the person had been driving or in actual physical control of a vehicle with 0.10 percent or more by weight of alcohol in his blood, as determined by a chemical test. The certificate must also indicate whether the officer served an order of revocation on the person and whether he issued the person a temporary license.

3. The department, upon receipt of such a certificate for which an order of revocation has not been served, after examining the certificate and copy of the result of the chemical test, if any, and finding that revocation is proper, shall issue an order revoking the person's license, permit or privilege to drive by mailing the order to the person at his last known address. The order must indicate the grounds for the revocation and the period during which the person is not eligible for a license, permit or privilege to drive and state that the person has a right to administrative and judicial review of the revocation and to have a temporary license. The order of revocation becomes effective 5 days after mailing.

4. Notice of an order of revocation and notice of the affirmation of a prior order of revocation or the cancellation of a temporary license provided in NRS 484.387 is sufficient if it is mailed to the person's last known address as shown by any application for a license. The date of mailing may be proved by the certificate of any officer or employee of the department of motor vehicles, specifying the time of mailing the notice. Such a notice is presumed to have been received upon the expiration of 5 days after it is deposited, postage prepaid, in the United States mail.

Sec. 16. NRS 484.387 is hereby amended to read as follows:

484.387 1. At any time while a person is not eligible for a license, permit or privilege to drive following an order of revocation issued pursuant to NRS 484.385, he may request in writing a hearing by the department to review the order of revocation, but he is only entitled to one hearing. The hearing must be conducted within 15 days after receipt of the request, or as soon thereafter as is practicable, in the county where the requester resides

unless the parties agree otherwise. The director of the department of motor vehicles or his agent may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a reexamination of the requester. The department shall issue an additional temporary license for a period which is sufficient to complete the administrative review.

2. The scope of the hearing must be limited to the issue whether or not the person failed to submit to a test or had 0.10 percent or more by weight of alcohol in his blood at the time of the test. Upon an affirmative finding on this issue, the department shall affirm the order of revocation. If a negative finding is made on the issue, the order of revocation must be rescinded.

3. If, after the hearing, the order of revocation is affirmed, the person whose license, privilege or permit has been revoked is entitled to a review of the same issue in district court in the same manner as provided by NRS 483.520. The reviewing court may issue a stay of the revocation upon appropriate terms if a substantial question is presented for review which is supported by affidavits or relevant portions of the record of the hearing. The court shall notify the department upon the issuance of a stay and the department shall issue an additional temporary license for a period which is sufficient to complete the review.

4. If a hearing officer grants a continuance of a hearing at the request of the person whose license was revoked, or a court does so after issuing a stay of the revocation, the officer or court shall notify the department, and the department shall cancel the temporary license and notify the holder by mailing the order of cancellation to his last known address.

Sec. 17. NRS 484.389 is hereby amended to read as follows:

484.389 1. If a person refuses to submit to a required chemical test provided for in NRS 484.383 or section 2 of this act, evidence of that refusal is admissible in any criminal or administrative action arising out of acts alleged to have been committed while he was driving a vehicle while under the influence of intoxicating liquor or a controlled substance.

2. Except as provided in subsection 4 of section 2 of this act, a court or hearing officer may not exclude evidence of a required test or failure to submit to such a test if the police officer or other person substantially complied with the provisions of NRS 484.383 to 484.393, inclusive, and section 2 of this act.

3. If a person submits to such a test, full information concerning that test must be made available, upon his request, to him or his attorney.

Sec. 17.5. NRS 484.393 is hereby amended to read as follows:

484.393 1. The results of any blood test administered under the provisions of NRS 484.383 or 484.391 are not admissible in any hearing or criminal action arising out of the acts alleged to have been committed while a person was under the influence of intoxicating liquor or a controlled substance unless:

(a) The blood tested was withdrawn by a physician, registered nurse, licensed practical nurse, advanced emergency medical technician-ambulance or a technician employed in a medical laboratory; and

(b) The test was performed on whole blood.

2. The limitation contained in paragraph (a) of subsection 1 does not apply to the taking of a chemical test of the urine, breath or other bodily substance.

3. No physician, registered nurse, license practical nurse, advanced emergency medical technician-ambulance or technician incurs any civil or criminal liability as a result of the administering of a blood test when requested by a police officer or the person to be tested to administer such test.

Sec. 18. NRS 484.777 is hereby amended to read as follows:

484.777 1. The provisions of this chapter are applicable and uniform throughout this state on all highways to which the public has a right of access or to which persons have access as invitees or licensees.

2. Unless otherwise provided by specific statute, any local authority may enact by ordinance traffic regulations which cover the same subject matter as the various sections of this chapter if the provisions of the ordinance are not in conflict with this chapter. It may also enact by ordinance regulations requiring the registration and licensing of bicycles.

3. A local authority shall not enact an ordinance:

(a) Governing the registration of vehicles and the licensing of drivers;

(b) Governing the duties and obligations of persons involved in traffic accident, other than the duties to stop, render aid and provide necessary information; or

(c) Providing a penalty for an offense for which the penalty prescribed by this chapter is greater than that imposed for a misdemeanor.

4. No person convicted or adjudged guilty of a violation of a traffic ordinance may be charged or tried in any other court in this state for the same offense.

Sec. 19. NRS 484.779 is hereby amended to read as follows:

484.779 1. Except as provided in subsection 3, a local

authority may adopt, by ordinance, regulations with respect to highways under its jurisdiction within the reasonable exercise of the police power:

(a) Regulating or prohibiting processions or assemblages on the highways.

(b) Designating particular highways as one-way highways and requiring that all vehicles thereon be moved in one specific direction.

(c) Designating any highway as a through highway, requiring that all vehicles stop before entering or crossing the highway, or designating any intersection as a stop or a yield intersection and requiring all vehicles to stop or yield at one or more entrances to the intersection.

(d) Designating truck and bicycle routes.

(e) Adopting such other traffic regulations related to specific highways as are expressly authorized by this chapter.

2. An ordinance relating to traffic control enacted under this section is not effective until official traffic-control devices giving notice of those local traffic regulations are posted upon or at the entrances to the highway or part thereof affected as may be most appropriate.

3. An ordinance enacted under this section is not effective with respect to:

(a) Highways constructed and maintained by the department of transportation under the authority granted by chapter 408 of NRS; or

(b) Alternative routes for the transport of radioactive, chemical or other hazardous materials which are governed by regulations of the United States Department of Transportation, until the ordinance has been approved by the board of directors of the department of transportation.

Sec. 20. NRS 484.791 is hereby amended to read as follows:

484.791 1. Any peace officer may, without a warrant, arrest a person if the officer has reasonable cause for believing that such person has committed any of the following offense:

(a) Homicide by vehicle;

(b) Driving or being in actual physical control of a vehicle while under the influence of intoxicating liquor or with 0.10 percent or more by weight of alcohol in his blood;

(c) Driving or being in actual physical control of a vehicle while under the influence of any controlled substance, under the combined influence of intoxicating liquor and a controlled substance, or after ingesting, applying or otherwise using any chemical, poison or organic solvent, or any compound or combination of any of these, to a degree which renders the person incapable of safely driving or exercising actual physical control of a vehicle;

(d) Failure to stop, give information or render reasonable assistance in the event of an accident resulting in death or personal injuries, as prescribed in NRS 484.219 and 484.223;

(e) Failure to stop or give information in the event of an accident resulting in damage to a vehicle, or to other property legally upon or adjacent to a highway, as prescribed in NRS 484.221 and 484.225; or

(f) Reckless driving.

2. Whenever any person is arrested as authorized in this section he shall be taken without unnecessary delay before the proper magistrate as specified in NRS 484.803, except that in the case of either of the offenses designated in paragraphs (e) and (f) a peace officer has the same discretion as is provided in other cases in NRS 484.795.

Sec. 21. NRS 483.250 is hereby amended to read as follows:

483.250 The department shall not issue any license under the provisions of NRS 483.010 to 483.630, inclusive:

1. To any person who is under the age of 16 years, except that the department may issue:

(a) A restricted license to a person between the ages of 14 and 16 years pursuant to the provisions of NRS 483.267 and 483.270.

(b) An instruction permit to a person who is at least 15½ years of age pursuant to the provisions of subsection 1 of NRS 483.280.

(c) A restricted instruction permit to a person under the age of 16 years pursuant to the provisions of subsection 3 of NRS 483.280.

2. To any person whose license has been revoked until the expiration of the period during which he is not eligible for a license.

3. To any person whose license has been suspended; but, upon good cause shown to the administrator, the department may issue a restricted license to him or shorten any period of suspension.

4. To any person who has previously been adjudged to be afflicted with or suffering from any mental disability or disease and who has not at the time of application been restored to legal capacity.

5. To any person who is required by NRS 483.010 to 483.630, inclusive, to take an examination, unless he has successfully passed the examination.

6. To any person when the administrator has good cause to believe that by reason of physical or mental disability that person would not be able to drive a motor vehicle with safety upon the highways.

7. To any person who is not a resident of this state.

Sec. 22. NRS 483.460 is hereby amended to read as follows:

483.460 1. Unless otherwise provided by statute, the department shall revoke the license, permit or privilege of any driver upon receiving a record of his conviction of any of the following offenses, when that conviction has become final, and the driver is not eligible for a license, permit or privilege to drive for the period indicated:

(a) For a period of 3 years if the offense is:

(1) Violation of NRS 484.3795 or subsection 2 of NRS 484.377 or homicide resulting from driving a vehicle while under the influence of intoxicating liquor or a controlled substance.

(2) A third or subsequent violation within 7 years of NRS 484.379.

(b) For a period of 1 year if the offense is:

(1) Any other manslaughter resulting from the driving of a motor vehicle or felony in the commission of which a motor vehicle is used, including the unlawful taking of a motor vehicle.

(2) Failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or bodily injury of another.

(3) Perjury or the making of a false affidavit or statement under oath to the department under NRS 483.010 to 483.630, inclusive, or under any other law relating to the ownership or driving of motor vehicles.

(4) Conviction, or forfeiture of bail not vacated, upon three charges of reckless driving committed within a period of 12 months.

(5) A second violation within 7 years of NRS 484.379 and the driver is not eligible for a restricted license during any of that period.

(c) For a period of 90 days, if the offense is a first violation within 7 years of NRS 484.379.

2. The department shall revoke the license, permit or privilege of a driver convicted of violating NRS 484.379 who fails to complete the educational course on the use of alcohol and controlled substances within the time ordered by the court and shall add a period of 90 days during which the driver is not eligible for a license, permit or privilege.

3. When the department is notified by a court that a person who has been convicted of violating NRS 484.379 has been permitted to enter a program of treatment pursuant to section 11 of this act, the department shall reduce by half the period during which he is not eligible for a license, permit or privilege to drive, but shall restore that reduction in time if notified that he was not accepted for or failed to complete the treatment.

Sec. 23. NRS 483.490 is hereby amended to read as follows:

483.490 1. Unless otherwise provided by specific statute, the department may not suspend a license for a period of more than 1 year.

2. After a driver's license has been suspended or revoked for an offense other than a second violation within 7 years of NRS 484.379 and half the period during which the driver is not eligible for a license has expired, the department may issue a restricted driver's license to an applicant permitting the applicant to drive a motor vehicle to and from work or in the course of his work, or both. Before issuing a restricted license, the department must be satisfied that a severe hardship exists because the applicant has no alternative means of transportation to and from work or he must drive regularly as a condition of his employment, and that the severe hardship outweighs the risk to the public if he is issued a restricted license.

3. A driver who violates a condition of a restricted license issued under subsection 2 or by another jurisdiction is guilty of a misdemeanor, and if his license was suspended or revoked for a violation of NRS 484.379, 484.3795, section 3 of this act or homicide resulting from driving a vehicle while under the influence of intoxicating liquor or a controlled substance, or the violation of a law of any other jurisdiction which prohibits the same conduct, he shall be punished in the manner provided by subsection 2 of NRS 483.560.

4. The periods of suspensions and revocations under this chapter and under section 3 of this act must run consecutively, except as provided in NRS 483.465 and 483.470, when the suspensions must run concurrently.

5. Whenever the department suspends or revokes a license, the period of suspension, or of ineligibility for a license after the revocation, begins upon the effective date of the revocations or suspension as contained in the notice thereof.

Sec. 24. NRS 483.525 is hereby amended to read as follows:

483.525 The department may not restore a driver's license, permit or privilege of driving a motor vehicle in this state which has been revoked unless the person who is seeking the license, permit or privilege submits evidence that he is maintaining insurance or is financially responsible for the operation of any motor vehicle of which he is the owner or which is owned by a member of his household and which he may be expected to operate.

Sec. 25. NRS 483.560 is hereby amended to read as follows:

483.560 1. Except as provided in subsection 2, any person who drives a motor vehicle on a highway or on premises to which the public has access at a time when his driver's license has been canceled, revoked or suspended is guilty of a misdemeanor.

2. If the license was suspended, revoked or restricted because of a violation of NRS 484.379, 484.3795, section 3 of this act or homicide resulting from driving a vehicle while under the influence of intoxicating liquor or a controlled substance, or the violation of a law of any other jurisdiction which prohibits the same conduct, he shall be punished by imprisonment in jail for not less than 30 days nor more than 6 months, and by a fine of not less than \$500 nor more than \$1,000. No person who is punished under this section may be granted probation and no sentence imposed for such a violation may be suspended. No prosecutor may dismiss a charge of such a violation in exchange for a plea of guilty or of *nolo contendere* to a lesser charge or for any other reason unless, in his judgment the charge is not supported by probable cause or cannot be proved at trial.

3. Any term of confinement imposed under the provisions of this section may be served intermittently at the discretion of the judge or justice of the peace. This discretion must be exercised after considering all the circumstances surrounding the offense, and the family and employment of the person convicted. However, the full term of confinement must be served within 6 months after the date of conviction, and any segment of time the person is confined must not consist of less than 24 hours.

4. Jail sentences simultaneously imposed under this section and section 10 or 11 of this act must run consecutively.

5. The department upon receiving a record of the conviction or punishment of any person under this section upon a charge of driving a vehicle while his license was:

(a) Suspended shall extend the period of the suspension for an additional like period.

(b) Revoked shall extend the period of ineligibility for a license, permit or privilege to drive for an additional 1 year.

(c) Restricted shall revoke his restricted license and extend the period of ineligibility for a license, permit or privilege to drive for an additional year.

Suspensions and revocations under this section must run consecutively.

Sec. 26. NRS 50.315 is hereby amended to read as follows:

50.315 1. Whenever any person has qualified in the district court of any county as an expert witness for the purpose of testifying regarding the presence in the blood or urine of a person of alcohol, a controlled substance whose use or possession is regulated by chapter 453 of NRS, or a chemical, poison or organic solvent, or the identity of a controlled substance alleged to have been in the possession of a person, the expert's affidavit is admissible in evidence in a criminal trial in the district court in any county in the district or a preliminary examination or trial in any justice's or municipal court in any county in the district to prove the identity of the person from whom the affiant received the blood or urine or purported controlled substance for analysis and the presence or absence of alcohol or a controlled substance, chemical, poison or organic solvent, as the case may be.

2. Whenever a person withdraws a sample of blood from another for the purpose of analysis by an expert as mentioned in subsection 1, the affidavit of the person who withdraws the sample is admissible in any court in any criminal proceeding to prove the occupation of the affiant, the identity of the person from whom the affiant withdrew the sample, the fact that the affiant kept the sample in his sole custody or control and in substantially the same condition as when he first obtained it until delivering it to another and the person to whom the affiant delivered it.

3. Whenever a person receives from another a sample of blood or urine or other tangible evidence that is alleged to contain alcohol or a controlled substance, chemical, poison or organic solvent, the affidavit of the person who receives the sample or other evidence may be admitted in any court in any criminal proceeding to prove the occupation of the affiant, the facts that the affiant received a sample or other evidence from another person and kept it in his sole custody or control in substantially the same condition as when he first received it until delivering it to another, and the identity of the person to whom the affiant delivered it.

Sec. 27. NRS 50.325 is hereby amended to read as follows:

50.325 1. Whenever a person is charged with an offense punishable under chapters 453 or 484 of NRS or homicide resulting from driving a vehicle while under the influence of intoxicating liquor or a controlled substance as defined in chapter 453 of NRS, or a chemical, poison or organic solvent, and it is necessary to prove the existence of any alcohol or the existence or identity of a controlled substance, chemical, poison or organic solvent, the district attorney or city attorney may request that the affidavit of an expert or other person described in NRS 50.315 be admitted in evidence at the trial or preliminary examination into the offense.

2. The request must be made at least 10 days prior to the date set for the trial or examination and must be sent to the defendant's counsel and to the defendant, by registered or certified mail, by the prosecuting attorney.

3. If the defendant or his counsel notifies the district attorney or city attorney by registered or certified mail at least 96 hours prior to the date set for the trial or examination that

the presence of the expert or other person is demanded, the affidavit must not be admitted. A defendant who demands the presence of the expert or other person and is convicted of violating NRS 484.379 shall pay the fees and expenses of that witness in court.

4. If at the trial or preliminary examination the affidavit of an expert or other person has been admitted in evidence, and it appears to be in the interest of justice that the expert or other person be examined or cross-examined in person, the judge or justice of the peace may adjourn the trial or preliminary examination for a period of not to exceed 3 judicial days for the purpose of receiving such testimony. The time within which a preliminary examination or trial is required is extended by the time of the adjournment.

Sec. 28 NRS 50.335 is hereby amended to read as follows:

50.335 The affidavit of an expert referred to in subsection 1 of NRS 50.315 and in NRS 50.325 must be substantially in one of the following forms:

1. If the sample contained a controlled substance as defined in chapter 453 of NRS or a chemical, poison or organic solvent:

STATE OF NEVADA)
COUNTY OF _____) ss.

_____, being first duly sworn, deposes and says: That I am _____ (occupation); that on _____ (date) I qualified before a district judge of this district as a witness qualified to detect the presence and identity in the blood or urine of a person of a controlled substance the use or possession of which is regulated by chapter 453 of NRS or a chemical, poison or organic solvent, or the identity of a controlled substance alleged to have been in the possession of a person; that on _____ (date) I obtained certain evidence from _____ bearing Identification No. _____ and consisting of _____ for the purpose of performing a chemical analysis upon the contents thereof; that on _____ (date) I analyzed the substance or sample and determined it to be or contain _____ (substance); and that on _____ (date) I replaced the contents in the container, sealed the container with a seal bearing my initials _____; that the evidence was in my sole

custody or control and remained in substantially the same condition as when it was first obtained by me until on _____ (date) I returned the evidence to _____ (name) or that I still have the evidence in my possession.

Affiant

Title

Subscribed and sworn to before me
this ____ day of _____, 19__.

Notary Public

2. If the sample contained alcohol:

STATE OF NEVADA)
) ss.
COUNTY OF _____)

_____, being first duly sworn, deposes and says: That I am _____ (occupation); that on _____ (date) I qualified before a district judge of this district as a witness qualified to detect the presence of alcohol in the blood or urine of a person; that on _____ (date) I received a sample of blood or urine bearing identification No. _____ from _____ (name); that on _____ (date) I analyzed the sample and determined that the blood or urine of the person from whom the sample was taken contained _____ (percent) by weight of alcohol; that the sample was in my sole custody or control and remained in substantially the same condition as when it was first obtained by me until on _____ (date) I returned the sample to _____ (name) or that I still have the sample in my possession.

Affiant

Title

Subscribed and sworn to before me
this ____ day of _____, 19__.

Notary Public

Sec. 29. Chapter 50 of NRS is hereby amended by adding thereto the provisions set forth as sections 30 and 31 of this act.

Sec. 30. The affidavit which is referred to in subsection 2 of NRS 50.315 and in NRS 50.325 must be substantially in the following form:

STATE OF NEVADA)
) ss.
COUNTY OF _____)

_____, being first duly sworn, deposes and says: That I am _____ (occupation); that on _____ (date) I withdrew a sample of blood from a person known to me as _____ (name) and affixed to the sample a seal or tag bearing Identification No. _____; that the sample was in my sole custody or control and remained in substantially the same condition as when it was first obtained by me until on _____ (date) I delivered the sample to _____ (name).

Affiant

Title

Subscribed and sworn to before me
this ____ day of _____, 19__.

Notary Public

Sec. 31. The affidavit which is referred to in subsection 3 of NRS 50.315 and in NRS 50.325 must be substantially in the following form:

STATE OF NEVADA)
) ss.
COUNTY OF _____)

_____, being first duly sworn, deposes and says: That I am _____ (occupation); that on _____ (date) I received certain evidence bearing Identification No. _____ from _____ (name); that the evidence was in my sole custody or control and remained in substantially the same condition as when it was first obtained by me until on _____ (date) I delivered the evidence to _____ (name).

Affiant

Title

Subscribed and sworn to before me
this ____ day of _____, 19__.

Notary Public

Sec. 32. NRS 179.245 is hereby amended to read as follows:

179.245 1. A person who has been convicted of:

(a) Any felony may, after 15 years from the date of his conviction or, if he is imprisoned, from the date of his release from actual custody;

(b) Any gross misdemeanor may, after 10 years from the date of his conviction or release from custody;

(c) A violation of NRS 484.379 other than a felony may, after 7 years from the date of his conviction or release from custody;
or

(d) Any other misdemeanor may, after 5 years from the date of his conviction or release from custody,
petition the court in which the conviction was obtained for the sealing of all records relating to the conviction.

2. The court shall notify the district attorney of the county in which the conviction was obtained, and the district attorney and any person having relevant evidence may testify and present evidence at the hearing on the petition.

3. If after hearing the court finds that, in the period prescribed in subsection 1, the petitioner has not been arrested, except for minor moving or standing traffic violations, the court may order sealed all records of the conviction which are in the custody of the court, of another court in the State of Nevada or of a public or private agency, company or official in the State of Nevada, and may also order all such criminal identification records of the petitioner returned to the file of the court where the proceeding was commenced from, but not limited to, the Federal Bureau of Investigation, the California identification and investigation bureau, sheriffs' offices and all other law enforcement agencies reasonably known by either the petitioner or the

court to have possession of such records.

Sec. 33. NRS 458.260 is hereby amended to read as follows:

458.260 1. Except as provided in subsection 2, the use of alcohol, the status of drunkard and the fact of being found in an intoxicated condition are not:

(a) Public offenses and shall not be so treated in any ordinance or resolution of a county, city or town.

(b) Elements of an offense giving rise to a criminal penalty or civil sanction.

2. The provisions of subsection 1 do not apply to the offenses enumerated in NRS 412.536, 412.538, 483.460, 483.490, 484.379, 484.3795, 488.205, 493.130, 705.250, subsection 2 of NRS 483.560, section 3 of this act and homicide resulting from driving while under the influence of intoxicating liquor or to similar offenses set forth in any ordinance or resolution of a county, city or town.

3. This section does not make intoxication an excuse or defense for any criminal act.

Sec. 34. NRS 458.300 is hereby amended to read as follows:

458.300 Subject to the provisions of NRS 458.290 to 458.350, inclusive, an alcoholic or a drug addict who has been convicted of a crime is eligible to elect treatment under the supervision of a state-approved alcohol or drug treatment facility before he is sentenced unless:

1. The crime is a crime against the person as provided for in chapter 200 of NRS;

2. The crime is that of selling a controlled substance as defined in chapter 453 of NRS;

3. The crime is that of driving under the influence of intoxicating liquor or while an habitual user or under the

influence of a controlled substance or while incapable of safely driving because of the use of any chemical, poison or organic solvent as provided for in NRS 484.379, or such driving which causes the death of or substantial bodily harm to another person as provided in NRS 484.3795;

4. The alcoholic or drug addict has a record of one or more convictions of a crime of violence or of selling a controlled substance as defined in chapter 453 of NRS, or of two or more convictions of any felony;

5. Other criminal proceedings alleging commission of a felony are pending against the alcoholic or drug addict;

6. The alcoholic or drug addict is on probation or parole and the appropriate parole or probation authority does not consent to such election; or

7. The alcoholic or drug addict elected and was admitted, pursuant to NRS 458.290 to 458.350, inclusive, to a treatment program on two prior occasions within any consecutive 2-year period.

Sec. 35. In extending to 7 years the period during which prior offenses may be considered, the legislature intends that any offense as defined in subsection 6 of section 10 of this act which occurred on or after July 1, 1976, and is evidenced by a conviction be considered a prior offense for the purposes of this act.

1983

REQUEST FOR HEARING—PROCEDURES AND INFORMATION:

You have the right to an administrative hearing before the Department of Motor Vehicles and Public Safety, Hearing Officer. Requests may be made by calling 885-3240. If the call is long distance, you may use the Toll-free Line 1-800-992-0900, Ext. 3240. Written requests can be made to the Department of Motor Vehicles and Public Safety, Hearing Office, 555 Wright Way, Carson City, Nevada 89711-0900.

Your hearing will be scheduled within 15 days of receipt of the request, when possible.

If you have a valid license, you will be given a Temporary License to cover the Administrative Hearing period.

You will be given the opportunity to present evidence and cross-examine witnesses. If you wish, you may be represented by an attorney; however, this would be at your own expense.

The hearing will cover the issues:

- (a) Whether you failed to submit to a chemical test, or
- (b) Whether you submitted to a breath test which showed an alcohol concentration of 0.10 percent or more.

Following this hearing a decision will be rendered by the Hearing Officer which either affirms or rescinds the revocation action. If you disagree with the Hearing Officer's decision you have the right of judicial review by appealing the decision to district court.

GENERAL INFORMATION:

If your license is revoked, you may not drive again in Nevada under any condition, including using a driver's license from another jurisdiction, until you have complied with Nevada requirements, and reinstated your driving privileges.

REINSTATEMENT INFORMATION:

Prior to reinstatement of your driver's license, it is necessary for you to send or bring to the Driver's License Division proof of financial responsibility. The most common method is to request the home office of your insurance company to forward a SR-22 Form to the Department of Motor Vehicles and Public Safety, Driver's License Division, 555 Wright Way, Carson City, Nevada 89711. This form is used to certify there is in effect a policy of liability insurance in respect to certain motor vehicles you own or wish to operate. This requirement must be maintained for a three-year period from the date of reinstatement.

If you are not a resident of Nevada, you will receive a notice of reinstatement only.

You may not drive in Nevada until:

- (a) The expiration of the revocation period as indicated in correspondence from the Driver's License Division; and
- (b) You have made application for and have received a new license; and
- (c) You have successfully completed the drive, written, and vision tests and paid a \$50.00 reinstatement fee.

RESTRICTED HARDSHIP LICENSE INFORMATION:

You may be eligible for a restricted hardship license after serving one-half of your revocation period, if this is an Implied Consent Revocation or a first DUI Offense Revocation.

Additional information may be obtained by writing to the Driver's License Division.

APPENDIX C

ILLINOIS DUI LEGISLATION AND FORMS FOR IMPLEMENTATION OF STATUTORY SUMMARY SUSPENSION

violating this Section or a similar provision of a local ordinance committed within 5 years of a previous violation of this Section or a similar provision of a local ordinance shall be mandatorily sentenced to a minimum of 48 consecutive hours of imprisonment or assigned to a minimum of 10 days of community service as may be determined by the court. The imprisonment or assignment shall not be subject to suspension nor shall the person be eligible for probation in order to reduce the sentence or assignment.

(d) Every person convicted of committing a violation of this Section shall be guilty of a Class 4 felony if:

(1) Such person committed a violation of paragraph (a) for the third or subsequent time; or

(2) Such person committed a violation of paragraph (a) while driving a school bus with children on board; or

(3) Such person in committing a violation of paragraph (a) was involved in a motor vehicle accident which resulted in great bodily harm or permanent disability or disfigurement to another, when such violation was the proximate cause of such injuries.

(e) After a finding of guilt and prior to any final sentencing, or an order for supervision, for an offense based upon an arrest for a violation of this Section or a similar provision of a local ordinance, individuals shall be required to undergo a professional evaluation to determine if an alcohol or other drug abuse problem exists and the extent of such a problem. Programs conducting these evaluations shall be licensed by the Department of Alcoholism and Substance Abuse. The cost of any such professional evaluation shall be paid for by the individual required to undergo such professional evaluation.

(f) Every person found guilty of violating this Section, whose operation of a motor vehicle while in violation of this Section proximately caused any incident resulting in an appropriate emergency response shall be liable for the expense of an emergency response as provided under Section 5-5-3 of the Unified Code of Corrections.¹

The Secretary of State shall revoke the driving privileges of any person convicted under this Section or a similar provision of a local ordinance.

Amended by P.A. 86-581, § 2, eff. Jan. 1, 1990.

¹ Chapter 38, ¶ 1005-5-3.

*For text of paragraph effective July 1, 1990,
see ¶ 11-501, post.*

**11-501. Driving while under the influence of alcohol,
other drug, or combination thereof**

Text of paragraph effective July 1, 1990.

§ 11-501. Driving while under the influence of alcohol, other drug, or combination thereof. (a) A person shall not drive or be in actual physical control of any vehicle within this State while:

1. The alcohol concentration in such person's blood or breath is 0.10 or more based on the definition of blood and breath units in Section 11-501.2;

2. Under the influence of alcohol;

3. Under the influence of any other drug or combination of drugs to a degree which renders such person incapable of safely driving; or

4. Under the combined influence of alcohol and any other drug or drugs to a degree which renders such person incapable of safely driving; or

5. There is any amount of a drug, substance or compound in such person's blood or urine resulting from the unlawful use or consumption of cannabis listed in the Cannabis Control Act, as now or hereafter amended¹ or a controlled substance listed in the Illinois Controlled Substance Act as now or hereafter amended.²

(b) The fact that any person charged with violating this Section is or has been legally entitled to use alcohol, or other drugs, or any combination of both, shall not constitute a defense against any charge of violating this Section.

(c) Except as provided under paragraph (d) of this Section, every person convicted of violating this Section or a similar provision of a local ordinance, shall be guilty of a Class A misdemeanor and, in addition to any other criminal or administrative action, for any second conviction of violating this Section or a similar provision of a local ordinance committed within 5 years of a previous violation of this Section or a similar provision of a local ordinance shall be mandatorily sentenced to a minimum of 48 consecutive hours of imprisonment or assigned to a minimum of 10 days of community service as may be determined by the court. The imprisonment or assignment shall not be subject to suspension nor shall the person be eligible for probation in order to reduce the sentence or assignment.

(d) Every person convicted of committing a violation of this Section shall be guilty of a Class 4 felony if:

(1) Such person committed a violation of paragraph (a) for the third or subsequent time; or

(2) Such person committed a violation of paragraph (a) while driving a school bus with children on board; or

(3) Such person in committing a violation of paragraph (a) was involved in a motor vehicle accident which resulted in great bodily harm or permanent disability or disfigurement to another, when such violation was the proximate cause of such injuries.

(e) After a finding of guilt and prior to any final sentencing, or an order for supervision, for an offense based upon an arrest for a violation of this Section or a similar provision of a local ordinance, individuals shall be required to undergo a professional evaluation to determine if an alcohol or other drug abuse problem exists and the extent of such a problem. Programs conducting these evaluations shall be licensed by the Department of Alcoholism and Substance Abuse. The cost of any such professional evaluation shall be paid for by the individual required to undergo such professional evaluation.

(f) Every person found guilty of violating this Section, whose operation of a motor vehicle while in violation of this Section proximately caused any incident resulting in an appropriate emergency response shall be liable for the expense of an emergency response as provided under Section 5-5-3 of the Unified Code of Corrections.

The Secretary of State shall revoke the driving privileges of any person convicted under this Section or a similar provision of a local ordinance.

Amended by P.A. 86-581, § 2, eff. Jan. 1, 1990; P.A. 86-1019, § 7, eff. July 1, 1990.

¹ Chapter 56½, ¶ 701 et seq.

² Chapter 56½, ¶ 1100 et seq.

*For text of paragraph effective until July 1,
1990, see ¶ 11-501, ante.*

P.A. 86-1019 incorporated the amendment by P.A. 86-581.

11-501.1. Suspension of drivers license—Statutory summary alcohol or other drug related suspension—Implied consent

Text of paragraph effective until July 1, 1990.

§ 11-501.1. Suspension of drivers license—Statutory summary alcohol or other drug related suspension—Implied consent. (a) Any person who drives or is in actual physical control of a motor vehicle upon the public highways of this State shall be deemed to have given consent, subject to the provisions of Section 11-501.2, to a chemical test or tests of blood, breath, or urine for the purpose of determining the alcohol, other drug, or combination thereof content of such person's blood if arrested, as evidenced by the issuance of a Uniform Traffic Ticket, for any offense as defined in Section 11-501 or a similar provision of a local ordinance. The test or tests shall be administered at the direction of the arresting officer. The law enforcement agency employing said officer shall designate which of the aforesaid tests shall be administered.

(b) Any person who is dead, unconscious or who is otherwise in a condition rendering such person incapable of refusal, shall be deemed not to have withdrawn the consent provided by paragraph (a) of this Section and the test or tests may be administered, subject to the provisions of Section 11-501.2.

(c) A person requested to submit to a test as provided above shall be warned by the law enforcement officer requesting the test that a refusal to submit to the test will result in the statutory summary suspension of such person's privilege to operate a motor vehicle as provided in Section 6-208.1 of this Code. The person shall also be warned by the law enforcement officer that if the person submits to the test or tests provided in paragraph (a) of this Section and the alcohol concentration in such person's blood or breath is 0.10 or greater, a statutory summary suspension of such person's privilege to operate a motor vehicle, as provided in Sections 6-208.1 and 11-501.1 of this Code will, be imposed.

(d) If the person refuses testing or submits to a test which discloses an alcohol concentration of 0.10 or more, the law enforcement officer shall immediately submit a sworn report to the circuit court of venue and the Secretary of State, certifying that the test or tests was or were requested pursuant to paragraph (a) and the person refused to submit to a test, or tests, or submitted to testing which disclosed an alcohol concentration of 0.10 or more.

(e) Upon receipt of the sworn report of a law enforcement officer submitted under paragraph (d), the Secretary of State shall enter the statutory summary suspension for the periods specified in Section 6-208.1, and effective as provided in paragraph (g).

If the person is a first offender as defined in Section 11-500 of this Code, and is not convicted of a violation of Section 11-501 of this Code or a similar provision of a local ordinance, then reports received by the Secretary of State under this Section shall, except during the actual time the Statutory Summary Suspension is in effect, be privileged information and for use only by the courts, police officers, prosecuting authorities or the Secretary of State.

(f) The law enforcement officer submitting the sworn report under paragraph (d) shall serve immediate notice of the statutory summary suspension on the person and such suspension shall be effective as provided in paragraph (g). In cases where the blood alcohol concentration of 0.10 or

greater is established by a subsequent analysis of blood or urine collected at the time of arrest, the arresting officer shall give notice as provided in this Section or by deposit in the United States mail of such notice in an envelope with postage prepaid and addressed to such person at his address as shown on the Uniform Traffic Ticket and the statutory summary suspension shall begin as provided in paragraph (g). The officer shall confiscate any Illinois driver's license or permit on the person at the time of arrest. If the person has a valid driver's license or permit, the officer shall issue the person a receipt, in a form prescribed by the Secretary of State, which will allow that person to drive during the periods provided for in paragraph (g). The officer shall immediately forward the driver's license or permit to the circuit court of venue along with the sworn report provided for in paragraph (d).

(g) The statutory summary suspension referred to in this Section shall take effect on the 46th day following the date the notice of the statutory summary suspension was given to the person.

(h) The following procedure shall apply whenever a person is arrested for any offense as defined in Section 11-501 or a similar provision of a local ordinance:

Upon receipt of the sworn report from the law enforcement officer, the Secretary of State shall confirm the statutory summary suspension by mailing a notice of the effective date of such suspension to the person and the court of venue. However, should the sworn report be defective by not containing sufficient information or be completed in error, the confirmation of the statutory summary suspension shall not be mailed to the person or entered to the record, instead the sworn report shall be forwarded to the court of venue with a copy returned to the issuing agency identifying any such defect.

Amended by P.A. 86-929, § 2, eff. Sept. 21, 1989.

For text of paragraph effective July 1, 1990, see ¶ 11-501.1, post.

11-501.1. Suspension of drivers license—Statutory summary alcohol or other drug related suspension—Implied consent

Text of paragraph effective July 1, 1990.

§ 11-501.1. Suspension of drivers license—Statutory summary alcohol or other drug related suspension—Implied consent. (a) Any person who drives or is in actual physical control of a motor vehicle upon the public highways of this State shall be deemed to have given consent, subject to the provisions of Section 11-501.2, to a chemical test or tests of blood, breath, or urine for the purpose of determining the alcohol, other drug, or combination thereof content of such person's blood if arrested, as evidenced by the issuance of a Uniform Traffic Ticket, for any offense as defined in Section 11-501 or a similar provision of a local ordinance. The test or tests shall be administered at the direction of the arresting officer. The law enforcement agency employing said officer shall designate which of the aforesaid tests shall be administered. A urine test may be administered even after a blood or breath test or both has been administered.

(b) Any person who is dead, unconscious or who is otherwise in a condition rendering such person incapable of refusal, shall be deemed not to have withdrawn the consent provided by paragraph (a) of this Section and the

test or tests may be administered, subject to the provisions of Section 11-501.2.

(c) A person requested to submit to a test as provided above shall be warned by the law enforcement officer requesting the test that a refusal to submit to the test will result in the statutory summary suspension of such person's privilege to operate a motor vehicle as provided in Section 6-208.1 of this Code. The person shall also be warned by the law enforcement officer that if the person submits to the test or tests provided in paragraph (a) of this Section and the alcohol concentration in such person's blood or breath is 0.10 or greater, or any amount of a drug, substance or compound resulting from the unlawful use or consumption of cannabis, as covered by the Cannabis Control Act as now or hereafter amended,¹ or a controlled substance listed in the Illinois Controlled Substance Act, as now or hereafter amended,² is detected in such person's blood or urine, a statutory summary suspension of such person's privilege to operate a motor vehicle, as provided in Sections 6-208.1 and 11-501.1 of this Code will be imposed.

(d) If the person refuses testing or submits to a test which discloses an alcohol concentration of 0.10 or more, or any amount of a drug, substance, or compound in such person's blood or urine resulting from the unlawful use or consumption of cannabis listed in the Cannabis Control Act or a controlled substance listed in the Illinois Controlled Substances Act, the law enforcement officer shall immediately submit a sworn report to the circuit court of venue and the Secretary of State, certifying that the test or tests was or were requested pursuant to paragraph (a) and the person refused to submit to a test, or tests, or submitted to testing which disclosed an alcohol concentration of 0.10 or more.

(e) Upon receipt of the sworn report of a law enforcement officer submitted under paragraph (d), the Secretary of State shall enter the statutory summary suspension for the periods specified in Section 6-208.1, and effective as provided in paragraph (g).

If the person is a first offender as defined in Section 11-500 of this Code, and is not convicted of a violation of Section 11-501 of this Code or a similar provision of a local ordinance, then reports received by the Secretary of State under this Section shall, except during the actual time the Statutory Summary Suspension is in effect, be privileged information and for use only by the courts, police officers, prosecuting authorities or the Secretary of State.

(f) The law enforcement officer submitting the sworn report under paragraph (d) shall serve immediate notice of the statutory summary suspension on the person and such suspension shall be effective as provided in paragraph (g). In cases where the blood alcohol concentration of 0.10 or greater or any amount of a drug, substance or compound resulting from the unlawful use or consumption of cannabis, as covered by the Cannabis Control Act, as now or hereafter amended, or a controlled substance listed in the Illinois Controlled Substance Act, as now or hereafter amended, is established by a subsequent analysis of blood or urine collected at the time of arrest, the arresting officer shall give notice as provided in this Section or by deposit in the United States mail of such notice in an envelope with postage prepaid and addressed to such person at his address as shown on the Uniform Traffic Ticket and the statutory summary suspension shall begin as provided in paragraph (g). The officer shall confiscate any Illinois driver's license or permit on the person at the

time of arrest. If the person has a valid driver's license or permit, the officer shall issue the person a receipt, in a form prescribed by the Secretary of State, which will allow that person to drive during the periods provided for in paragraph (g). The officer shall immediately forward the driver's license or permit to the circuit court of venue along with the sworn report provided for in paragraph (d).

(g) The statutory summary suspension referred to in this Section shall take effect on the 46th day following the date the notice of the statutory summary suspension was given to the person.

(h) The following procedure shall apply whenever a person is arrested for any offense as defined in Section 11-501 or a similar provision of a local ordinance:

Upon receipt of the sworn report from the law enforcement officer, the Secretary of State shall confirm the statutory summary suspension by mailing a notice of the effective date of such suspension to the person and the court of venue. However, should the sworn report be defective by not containing sufficient information or be completed in error, the confirmation of the statutory summary suspension shall not be mailed to the person or entered to the record, instead the sworn report shall be forwarded to the court of venue with a copy returned to the issuing agency identifying any such defect.

Amended by P.A. 86-929, § 2, eff. Sept. 21, 1989; P.A. 86-1019, § 7, eff. July 1, 1990.

¹ Chapter 56½, ¶ 701 et seq.

² Chapter 56½, ¶ 1100 et seq.

For text of paragraph effective until July 1, 1990, see ¶ 11-501.1, ante.

P.A. 86-1019 incorporated the amendment by P.A. 86-929.

11-501.2. Chemical and other tests

§ 11-501.2. Chemical and other tests. (a) Upon the trial of any civil or criminal action or proceeding arising out of an arrest for an offense as defined in Section 11-501 or a similar local ordinance or proceedings pursuant to Section 2-118.1, evidence of the concentration of alcohol, other drug or combination thereof in a person's blood or breath at the time alleged, as determined by analysis of the person's blood, urine, breath or other bodily substance, shall be admissible. Where such test is made the following provisions shall apply:

1. Chemical analyses of the person's blood, urine, breath or other bodily substance to be considered valid under the provisions of this Section shall have been performed according to standards promulgated by the Department of Public Health in consultation with the Department of State Police by an individual possessing a valid permit issued by that Department for this purpose. The Director of the Department of Public Health in consultation with the Department of State Police is authorized to approve satisfactory techniques or methods, to ascertain the qualifications and competence of individuals to conduct such analyses, to issue permits which shall be subject to termination or revocation at the discretion of that Department and to certify the accuracy of breath testing equipment. The Illinois Department of Public Health shall prescribe regulations as necessary to implement this Section.

2. When a person shall submit to a blood test at the request of a law enforcement officer under the provisions of Section 11-501.1, only a physician authorized to practice

medicine, a registered nurse or other qualified person approved by the Department of Public Health may withdraw blood for the purpose of determining the alcohol, drug, or alcohol and drug content therein. This limitation shall not apply to the taking of breath or urine specimens.

3. The person tested may have a physician, or a qualified technician, chemist, registered nurse, or other qualified person of their own choosing administer a chemical test or tests in addition to any administered at the direction of a law enforcement officer. The failure or inability to obtain an additional test by a person shall not preclude the admission of evidence relating to the test or tests taken at the direction of a law enforcement officer.

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

5. Alcohol concentration shall mean either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

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

1. If there was at that time an alcohol concentration of 0.05 or less, it shall be presumed that the person was not under the influence of alcohol.

2. If there was at that time an alcohol concentration in excess of 0.05 but less than 0.10, such facts shall not give rise to any presumption that the person was or was not under the influence of alcohol, but such fact may be considered with other competent evidence in determining whether the person was under the influence of alcohol.

3. If there was at that time an alcohol concentration of 0.10 or more, it shall be presumed that the person was under the influence of alcohol.

4. The foregoing provisions of this Section shall not be construed as limiting the introduction of any other relevant evidence bearing upon the question whether the person was under the influence of alcohol.

(c) If a person under arrest refuses to submit to a chemical test under the provisions of Section 11-501.1, evidence of refusal shall be admissible in any civil or criminal action or proceeding arising out of acts alleged to have been committed while the person under the influence of alcohol, or other drugs, or combination of both was driving or in actual physical control of a motor vehicle. Amended by P.A. 86-929, § 2, eff. Sept. 21, 1989.

11-501.3. § 11-501.3. Repealed by P.A. 84-1394, § 7, eff. Sept. 18, 1986.

11-501.4. Admissibility of written blood alcohol test results conducted in the regular course of providing emergency medical treatment

§ 11-501.4. Admissibility of written blood alcohol test results conducted in the regular course of providing emergency medical treatment. (a) Notwithstanding any other provision of law, the written results of blood alcohol tests

conducted upon persons receiving medical treatment in a hospital emergency room are admissible in evidence as a business record exception to the hearsay rule only in prosecutions for any violation of Section 11-501 of this Code or a similar provision of a local ordinance, or in prosecutions for reckless homicide brought under the Criminal Code of 1961,¹ when each of the following criteria are met:

(1) the blood alcohol tests were ordered by a physician on duty at the hospital emergency room and were performed in the regular course of providing emergency medical treatment in order to assist the physician in diagnosis or treatment;

(2) the blood alcohol tests were performed by the hospital's own laboratory; and

(3) the written results of the blood alcohol tests were received and considered by the physician on duty at the hospital emergency room to assist that physician in diagnosis or treatment.

(b) The confidentiality provisions of law pertaining to medical records and medical treatment shall not be applicable with regard to blood alcohol tests performed under the provisions of this Section in prosecutions as specified in subsection (a) of this Section. No person shall be liable for civil damages as a result of the evidentiary use of blood alcohol test results under this Section, or as a result of that person's testimony made available under this Section.

Added by P.A. 85-992, § 1, eff. Jan. 5, 1988.

¹ Chapter 38, ¶ 1-1 et seq.

Another ¶ 11-501.4 was renumbered as ¶ 11-501.5.

11-501.5. Preliminary breath screening test

Text of paragraph effective until July 1, 1990.

§ 11-501.5. Preliminary Breath Screening Test. If a law enforcement officer has probable cause to believe that a person is violating or has violated Section 11-501 or a similar provision of a local ordinance, the officer, prior to an arrest, may request the person to provide a sample of his or her breath for a preliminary breath screening test using a portable device approved by the Department of Public Health. The results of this preliminary breath screening test may be used by the law enforcement officer for the purpose of assisting with the determination of whether to require a chemical test as authorized under Sections 11-501.1 and 11-501.2, and the appropriate type of test to request. The chemical test authorized under Sections 11-501.1 and 11-501.2 may be requested by the officer regardless of the result of the preliminary breath screening test, if probable cause for an arrest exists. The result of a preliminary breath screening test may be used by the defendant as evidence in any administrative or court proceeding involving a violation of Section 11-501 or 11-501.1.

Formerly § 501.4. Renumbered § 501.5 and amended by P.A. 85-1209, Art. II, § 2-51, eff. Aug. 30, 1988.

For text of paragraph effective July 1, 1990, see ¶ 11-501.5, post.

11-501.5. Preliminary breath screening test

Text of paragraph effective July 1, 1990.

§ 11-501.5. Preliminary Breath Screening Test. If a law enforcement officer has probable cause to believe that a person is violating or has violated Section 11-501 or a similar provision of a local ordinance, the officer, prior to an arrest, may request the person to provide a sample of his or her breath for a preliminary breath screening test using a portable device approved by the Department of Public Health. The results of this preliminary breath screening test may be used by the law enforcement officer for the purpose of assisting with the determination of whether to require a chemical test as authorized under Sections 11-501.1 and 11-501.2, and the appropriate type of test to request. Any chemical test authorized under Sections 11-501.1 and 11-501.2 may be requested by the officer regardless of the result of the preliminary breath screening test, if probable cause for an arrest exists. The result of a preliminary breath screening test may be used by the defendant as evidence in any administrative or court proceeding involving a violation of Section 11-501 or 11-501.1.

Amended by P.A. 86-1019, § 7, eff. July 1, 1990.

For text of paragraph effective until July 1, 1990, see ¶ 11-501.5, ante.

Article II of P.A. 85-1209, the First 85th General Assembly Combining Revisory Act, resolved multiple actions in the 85th General Assembly and made certain technical corrections through P.A. 85-1014.

11-501.6. Driver involvement in personal injury or fatal motor vehicle accident—Chemical test

Paragraph effective Jan. 1, 1991.

§ 11-501.6. Driver involvement in personal injury or fatal motor vehicle accident—chemical test.

(a) Any person who drives or is in actual control of a motor vehicle upon the public highways of this State shall be deemed to have given consent to a breath test using a portable device as approved by the Department of Public Health or to a chemical test or tests of blood, breath, or urine for the purpose of determining the alcohol or other drug content of such person's blood if there is probable cause to believe that such person was the driver at fault, in whole or in part, for a motor vehicle accident which resulted in the death or personal injury of any person.

(b) Any person who is dead, unconscious or who is otherwise in a condition rendering such person incapable of refusal shall be deemed not to have withdrawn the consent provided by subsection (a) of this Section. In addition, if a driver of a vehicle is receiving medical treatment as a result of a motor vehicle accident, any physician licensed to practice medicine, registered nurse or a phlebotomist acting under the direction of a licensed physician shall withdraw blood for testing purposes to ascertain the presence of alcohol or other drugs, upon the specific request of a law enforcement officer. However, no such testing shall be performed until, in the opinion of the medical personnel on scene, the withdrawal can be made without interfering with or endangering the well-being of the patient.

(c) A person requested to submit to a test as provided above shall be warned by the law enforcement officer requesting the test that a refusal to submit to the test, or submission to the test resulting in an alcohol concentration of 0.10 or more may result in the suspension of such person's privilege to operate a motor vehicle.

(d) If the person refuses testing or submits to a test which discloses an alcohol concentration of 0.10 or more, the law enforcement officer shall immediately submit a sworn report to the Secretary of State on a form prescribed by the Secretary, certifying that the test or tests were requested pursuant to subsection (a) and the person refused to submit to a test or tests or submitted to testing which disclosed an alcohol concentration of 0.10 or more.

(e) The results of any test or tests administered pursuant to this Section, other than a test conducted with a portable device, may be used in any civil or criminal action. Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a vehicle while under the influence of alcohol, the concentration of alcohol in the person's blood or breath at the time alleged as shown by analysis of the person's blood, urine, breath, or other bodily substance shall give rise to the following presumptions:

(1) If there was at that time an alcohol concentration of 0.05 or less, it shall be presumed that the person was not under the influence of alcohol.

(2) If there was at that time an alcohol concentration in excess of 0.05 but less than 0.10, such facts shall not give rise to any presumption that the person was or was not under the influence of alcohol, but such fact may be considered with other competent evidence in determining whether the person was under the influence of alcohol.

(3) If there was at that time an alcohol concentration of 0.10 or more, it shall be presumed that the person was under the influence of alcohol.

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

(f) If a person refuses to submit to a chemical test under the provisions of this Section, evidence of refusal shall be admissible in any civil or criminal action or proceeding arising out of acts alleged to have been committed while the person was driving or in actual physical control of a motor vehicle.

(g) For the purposes of this Section, a personal injury shall include any injury that requires immediate professional attention in either a doctor's office or a medical facility.

Added by P.A. 86-947, § 2, eff. Jan. 1, 1991.

11-502. Transportation or possession of alcoholic liquor in a motor vehicle

§ 11-502. Transportation or possession of alcoholic liquor in a motor vehicle. (a) Except as provided in paragraph (c), no driver may transport, carry, possess or have any alcoholic liquor within the passenger area of any motor vehicle upon a highway in this State except in the original container and with the seal unbroken.

(b) Except as provided in paragraph (c), no passenger may carry, possess or have any alcoholic liquor within any passenger area of any motor vehicle upon a highway in this State except in the original container and with the seal unbroken.

(c) This Section shall not apply to the passengers in a limousine when it is being used for purposes for which a limousine is ordinarily used, the passengers on a chartered bus when it is being used for purposes for which chartered

(b) Upon the notice of statutory summary suspension served under Section 11-501.1, the person may make a written request for a judicial hearing in the circuit court of venue. The request to the circuit court shall state the grounds upon which the person seeks to have the statutory summary suspension rescinded. Within 30 days after receipt of the written request or the first appearance date on the Uniform Traffic Ticket issued pursuant to a violation of Section 11-501, or a similar provision of a local ordinance, the hearing shall be conducted by the circuit court having jurisdiction. This judicial hearing, request or process shall not stay or delay the statutory summary suspension. Such hearings shall proceed in the court in the same manner as in other civil proceedings.

The hearing may be conducted upon a review of the law enforcement officer's own official reports; provided however, that the person may subpoena the officer. Failure of the officer to answer the subpoena shall be considered by the court to be the same as the failure of a complaining witness to appear in any criminal proceeding.

The scope of the hearing shall be limited to the issues of:

1. Whether the person was placed under arrest for an offense as defined in Section 11-501, or a similar provision of a local ordinance, as evidenced by the issuance of a Uniform Traffic Ticket; and

2. Whether the arresting officer had reasonable grounds to believe that such person was driving or in actual physical control of a motor vehicle upon a highway while under the influence of alcohol, other drug, or combination thereof; and

3. Whether such person, after being advised by the arresting officer that the privilege to operate a motor vehicle would be suspended if the person refused to submit to and complete the test or tests, did refuse to submit to or complete such test or tests to determine the person's alcohol or drug concentration; or

4. Whether the person, after being advised by the arresting officer that the privilege to operate a motor vehicle would be suspended if the person submits to a chemical test, or tests, and such test discloses an alcohol concentration of 0.10 or more, and such person did submit to and complete such test or tests which determined an alcohol concentration of 0.10 or more.

Upon the conclusion of the judicial hearing, the circuit court shall sustain or rescind the statutory summary suspension and immediately notify the Secretary of State. Reports received by the Secretary of State under this Section shall be privileged information and for use only by the courts, police officers and Secretary of State.

Amended by P.A. 84-1394, § 5, eff. Sept. 18, 1986.

For text of paragraph effective July 1, 1990, see ¶ 2-118.1, post.

2-118.1. Opportunity for hearing—Statutory summary alcohol or other drug related suspension

Text of paragraph effective July 1, 1990.

§ 2-118.1. Opportunity for hearing—statutory summary alcohol or other drug related suspension. (a) A statutory summary suspension of driving privileges under Section 11-501.1 shall not become effective until the person is notified in writing of the impending suspension and informed that he may request a hearing in the circuit court

of venue under paragraph (b) of this Section and the statutory summary suspension shall become effective as provided in Section 11-501.1.

(b) Upon the notice of statutory summary suspension served under Section 11-501.1, the person may make a written request for a judicial hearing in the circuit court of venue. The request to the circuit court shall state the grounds upon which the person seeks to have the statutory summary suspension rescinded. Within 30 days after receipt of the written request or the first appearance date on the Uniform Traffic Ticket issued pursuant to a violation of Section 11-501, or a similar provision of a local ordinance, the hearing shall be conducted by the circuit court having jurisdiction. This judicial hearing, request or process shall not stay or delay the statutory summary suspension. Such hearings shall proceed in the court in the same manner as in other civil proceedings.

The hearing may be conducted upon a review of the law enforcement officer's own official reports; provided however, that the person may subpoena the officer. Failure of the officer to answer the subpoena shall be considered by the court to be the same as the failure of a complaining witness to appear in any criminal proceeding.

The scope of the hearing shall be limited to the issues of:

1. Whether the person was placed under arrest for an offense as defined in Section 11-501, or a similar provision of a local ordinance, as evidenced by the issuance of a Uniform Traffic Ticket; and

2. Whether the arresting officer had reasonable grounds to believe that such person was driving or in actual physical control of a motor vehicle upon a highway while under the influence of alcohol, other drug, or combination thereof; and

3. Whether such person, after being advised by the arresting officer that the privilege to operate a motor vehicle would be suspended if the person refused to submit to and complete the test or tests, did refuse to submit to or complete such test or tests to determine the person's alcohol or drug concentration; or

4. Whether the person, after being advised by the arresting officer that the privilege to operate a motor vehicle would be suspended if the person submits to a chemical test, or tests, and such test discloses an alcohol concentration of 0.10 or more, or any amount of a drug, substance, or compound in such person's blood or urine resulting from the unlawful use or consumption of cannabis listed in the Cannabis Control Act¹ or a controlled substance listed in the Illinois Controlled Substances Act,² and such person did submit to and complete such test or tests which determined an alcohol concentration of 0.10 or more.

Upon the conclusion of the judicial hearing, the circuit court shall sustain or rescind the statutory summary suspension and immediately notify the Secretary of State. Reports received by the Secretary of State under this Section shall be privileged information and for use only by the courts, police officers and Secretary of State.

Amended by P.A. 86-1019, § 7, eff. July 1, 1990.

¹ Chapter 56½, ¶ 701 et seq.

² Chapter 56½, ¶ 1100 et seq.

For text of paragraph effective until July 1, 1990, see ¶ 2-118.1, ante.

LAW ENFORCEMENT SWORN REPORT

Circuit Court, _____ County, _____ Municipal District

DUI TRAFFIC CITATION NO. _____

Case no. _____

DUI TRAFFIC CITATION NO. _____

NAME _____
LAST FIRST MIDDLE

CDL DRIVER'S LICENSE NUMBER STATE

OPERATING: Commercial Motor Vehicle Placarded Haz. Mat. Vehicle

STREET ADDRESS _____
CITY & STATE _____

ARREST DATE CITY AND/OR COUNTY OF ARREST AM PM
Mo. Day Yr. Time

SEX DATE OF BIRTH NOTICE OF SUMMARY SUSPENSION GIVEN ON
Mo. Day Yr.

PLACE OF REFUSAL OR LOCATION OF TEST(S) REF. OR TEST DATE AM PM
Mo. Day Yr. Time

THE SUSPENSION SHALL TAKE EFFECT ON THE 46th DAY FOLLOWING ISSUANCE OF THIS NOTICE OF SUMMARY SUSPENSION. SUBSEQUENT TO AN ARREST FOR VIOLATING SECTION 11-501 OF THE ILLINOIS VEHICLE CODE, OR A SIMILAR PROVISION OF A LOCAL ORDINANCE, YOU ARE HEREBY NOTIFIED that on the date shown above you were asked to submit to a chemical test(s) to determine the alcohol, other drug, or combination thereof content of your blood and warned of the consequences pursuant to Section 11-501.1 of The Illinois Vehicle Code.

- Because you refused to submit to or failed to complete testing, your driver's license and/or privileges will be suspended for a minimum of 6 months.*
 Because you submitted to testing conducted pursuant to Section 11-501.2 which disclosed:
 an alcohol concentration of _____, which is 0.10 or more;
 any amount of a drug, substance, or compound in your blood or urine resulting from the unlawful use or consumption of cannabis listed in the Cannabis Control Act or a controlled substance listed in the Illinois Controlled Substances Act;
your driving privileges will be suspended for a minimum of 3 months.*

*NOTE: If it is determined that you are not a "first offender", as defined in Section 11-500 of The Illinois Vehicle Code and:
You refused to submit to, or failed to complete, all requested chemical testing, the period of suspension will be a minimum of 2 years; or if
You submitted to chemical testing which resulted in an alcohol concentration of 0.10 or more, the period of suspension will be a minimum of one year.

Driver's license surrendered? Yes No; Reason _____

Driver's license valid at time of arrest? Yes (Sign receipt) No (Void receipt)

I have complied with Section 11-501.1 by having reasonable grounds to believe the arrestee was in violation of Section 11-501 or a similar provision of a local ordinance: (Explain) _____

Pursuant to Section 11-501.1 of The Illinois Vehicle Code I have:

- Served immediate notice of summary suspension of driving privileges on the above named person.
 Given notice of summary suspension of driving privileges to the above named person by depositing in the United States mail said notice in an envelope with the postage prepaid addressed to said person at the address as shown on the Uniform Traffic Ticket.

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

SIGNATURE OF ARRESTING OFFICER _____

IDENTIFYING NO. _____

LAW ENFORCEMENT AGENCY _____

DATE _____
Mo. Day Yr.

WARNING TO MOTORIST

CASE NO. _____

DUI TRAFFIC CITATION NO. _____

DUI TRAFFIC CITATION NO. _____

SUBSEQUENT TO AN ARREST FOR DRIVING WHILE UNDER THE INFLUENCE OF ALCOHOL, OTHER DRUG OR A COMBINATION THEREOF (DUI), YOU ARE HEREBY NOTIFIED THAT:

AS PROVIDED IN SECTION 11-500 OF THE ILLINOIS VEHICLE CODE, YOU ARE A FIRST OFFENDER UNLESS WITHIN THE LAST FIVE YEARS OF THIS ARREST FOR DUI YOU HAVE HAD:

A PREVIOUS CONVICTION OR COURT ASSIGNED SUPERVISION FOR DUI; OR

A CONVICTION IN ANY OTHER STATE FOR DUI OR A SIMILAR OFFENSE WHERE THE CAUSE OF ACTION IS THE SAME OR SUBSTANTIALLY SIMILAR TO THE ILLINOIS VEHICLE CODE; OR

PURSUANT TO A DUI ARREST, AN ILLINOIS DRIVER'S LICENSE SUSPENSION FOR REFUSING OR FAILING TO COMPLETE ALL REQUESTED CHEMICAL TEST(S) OR FOR SUBMITTING TO CHEMICAL TESTING DISCLOSING AN ALCOHOL CONCENTRATION OF 0.10 OR MORE OR ANY AMOUNT OF A DRUG, SUBSTANCE, OR COMPOUND RESULTING FROM THE UNLAWFUL USE OR CONSUMPTION OF CANNABIS LISTED IN THE CANNABIS CONTROL ACT OR A CONTROLLED SUBSTANCE LISTED IN THE ILLINOIS CONTROLLED SUBSTANCES ACT (SECTION 11-501.1), EXCEPT IN CASES WHERE YOU SUBMITTED TO CHEMICAL TESTING RESULTING IN AN ALCOHOL CONCENTRATION OF 0.10 OR MORE OR ANY AMOUNT OF A DRUG, SUBSTANCE OR COMPOUND RESULTING FROM THE UNLAWFUL USE OR CONSUMPTION OF CANNABIS LISTED IN THE CANNABIS CONTROL ACT OR A CONTROLLED SUBSTANCE LISTED IN THE ILLINOIS CONTROLLED SUBSTANCES ACT, AND WERE SUBSEQUENTLY FOUND NOT GUILTY OF THE ASSOCIATED DUI CHARGE.

CONSIDERING THE ABOVE, YOU ARE WARNED:

1. IF YOU ARE A FIRST OFFENDER, REFUSAL OR FAILURE TO COMPLETE ALL CHEMICAL TESTS REQUESTED WILL RESULT IN A SUSPENSION OF YOUR DRIVING PRIVILEGES FOR A MINIMUM OF 6 MONTHS.
2. IF YOU ARE A FIRST OFFENDER AND SUBMIT TO A CHEMICAL TEST(S) DISCLOSING AN ALCOHOL CONCENTRATION OF 0.10 OR MORE, YOUR DRIVING PRIVILEGES WILL BE SUSPENDED FOR A MINIMUM OF 3 MONTHS.
3. IF YOU ARE NOT A FIRST OFFENDER, REFUSAL OR FAILURE TO COMPLETE ALL CHEMICAL TESTS REQUESTED WILL RESULT IN A SUSPENSION OF YOUR DRIVING PRIVILEGES FOR A MINIMUM OF 2 YEARS.
4. IF YOU ARE NOT A FIRST OFFENDER AND SUBMIT TO A CHEMICAL TEST(S) DISCLOSING AN ALCOHOL CONCENTRATION OF 0.10 OR MORE, YOUR DRIVING PRIVILEGES WILL BE SUSPENDED FOR A MINIMUM OF ONE YEAR.
5. IF YOU SUBMIT TO A CHEMICAL TEST(S) DISCLOSING ANY AMOUNT OF A DRUG, SUBSTANCE, OR COMPOUND RESULTING FROM THE UNLAWFUL USE OR CONSUMPTION OF CANNABIS LISTED IN THE CANNABIS CONTROL ACT OR A CONTROLLED SUBSTANCE LISTED IN THE ILLINOIS CONTROLLED SUBSTANCES ACT, YOUR DRIVING PRIVILEGES WILL BE SUSPENDED FOR A MINIMUM OF 3 MONTHS.

WARNING ISSUED TO _____
Name of Motorist Driver's License Number

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

Signature of Arresting Officer Identifying No.

Law Enforcement Agency

Date of Warning Time of Warning

am
pm

APPENDIX D

**MISSISSIPPI IMPLIED CONSENT LAW AND FORMS FOR
IMPLEMENTATION OF ADMINISTRATIVE SUSPENSION**

CHAPTER 11
Implied Consent Law

- SEC.
- 63-11-1. Citation of chapter.
- 63-11-3. "Driving privilege" and "community service" defined.
- 63-11-5. Implied consent to chemical test; warnings; preliminary test.
- 63-11-7. Blood test of dead or unconscious accident victims.
- 63-11-9. Persons who may take blood samples under Section 63-11-7.
- 63-11-11. Urine specimens.
- 63-11-13. Accused may have additional test administered by person of his choice; effect of failure to obtain.
- 63-11-15. Availability of test result to accused or his attorney.
- 63-11-17. Liability for administering blood test.
- 63-11-19. Tests to be performed according to approved methods; certification of administrators.
- 63-11-21. Refusal to submit to test shall result in confiscation of driver's license.
- 63-11-23. Review and notice of suspension; seizure of license where test indicates blood alcohol concentration of .10 percent or more; temporary permit to drive; representation of state in proceedings.
- 63-11-25. Appeals; driving privilege suspended pending outcome.
- 63-11-26. Final actions which foreclose judicial review or appeal.
- 63-11-27. Suspension of nonresident drivers privilege; notification of authorities in home state.
- 63-11-29. [Repealed].
- 63-11-30. Penalties for operation of vehicle while under influence of intoxicating liquor or other substance that impairs ability to operate vehicle; where violation causes injury or death to another person.
- 63-11-31. [Repealed].
- 63-11-32. Driver improvement program for first offenders convicted of driving while intoxicated or under influence of another substance which impairs ability to operate motor vehicle; assessments in addition to monetary penalties; disposition of funds.
- 63-11-33. [Repealed].
- 63-11-35. [Repealed].
- 63-11-37. Copy of conviction record sent to commissioner; reduction of revocation or suspension period; additional restrictions on drinking privileges.
- 63-11-39. Admissibility of evidence in criminal action; reduction of driving while under influence charge prohibited.
- 63-11-40. Driving while license or privilege is cancelled, suspended or revoked; penalties.
- 63-11-41. Admissibility of non-submission to test in criminal action.
- 63-11-43. Admissibility of test results or of submission or non-submission to test in civil case.
- 63-11-45. Effect of test results or non-submission to test on insurance coverage.
- 63-11-47. Selection and purchase of equipment and supplies.

§ 63-11-1. Citation of chapter.

This chapter may be cited as the Mississippi Implied Consent Law.

SOURCES: Codes, 1942, § 8175-01; Laws, 1971, ch. 515, § 1, eff from and after April 1, 1972.

Cross references—

Provisions of this chapter applicable to Mississippi Commercial Driver's License Law, see § 63-1-74.

Mississippi Commercial Driver's License Law exemptions not exemption from provisions of this chapter, see § 63-1-78.

Provisions of the Implied Consent Law applying instead of statute allowing deposit of driver's license in lieu of bail, in cases of driving while intoxicated, see § 63-9-25(6).

Research and Practice References—

7A Am Jur 2d, Automobiles and Highway Traffic §§ 296 et seq.

61A CJS, Motor Vehicles §§ 625(1) et seq.

Annotations—

Snowmobile operation as DWI or DUL 56 ALR4th 1092.

§ 63-11-3. "Driving privilege" and "community service" defined.

Whenever and wherever the words "driving privilege" or "privilege" appear in this chapter, they shall mean both the driver's license of those licensed in Mississippi and the driving privilege of unlicensed residents and the privilege of nonresidents, licensed or not, the purpose of this section being to make unlicensed and nonresident drivers subject to the same penalties as licensed residents.

The term "community service" as used in this chapter shall mean work, projects or services for the benefit of the community assigned, supervised and recorded by appropriate public officials.

SOURCES: Codes, 1942, § 8175-24; Laws, 1971, ch. 515, § 24; 1983, ch. 466, § 1, eff from and after July 1, 1983.

Editor's Note—

Section 12 of Chapter 466, Laws, 1983, eff from and after July 1, 1983, provides as follows:
"SECTION 12. Prosecutions, convictions and penalties for violations which occurred prior to July 1, 1983, under laws amended by this act, and suspensions or denials of driver's licenses, permits or privileges made pursuant to laws amended by this act, shall not be affected or abated by the provisions of this act. In addition, convictions which occurred prior to July 1, 1983, under laws amended by this act shall be counted for the purposes of determining the penalties which shall be imposed on any person convicted for a second or subsequent offense under the provisions of the laws amended by this act."

§ 63-11-5. Implied consent to chemical test; warnings; preliminary test.

Any person who operates a motor vehicle upon the public highways, public roads and streets of this state shall be deemed to have given his consent, subject to the provisions of this chapter, to a chemical test or test of his breath for the purpose of determining the alcoholic content of his blood. A person may give his consent to a chemical test or tests of his blood or urine for the purpose of determining the presence in his body of any other substance which would impair a person's ability to operate a motor vehicle. The test or tests shall be administered at the direction of any highway patrol officer, any sheriff or his duly commissioned deputies, any police officer in any incorporated municipality, or any officer of a state-supported institution of higher learning campus police force if such officer is exercising this authority in regard to a violation that occurred on campus property, when such officer has reasonable grounds and probable cause to

believe that the person was driving or had under his actual physical control a motor vehicle upon the public streets or highways of this state while under the influence of intoxicating liquor or any other substance which had impaired such person's ability to operate a motor vehicle. No such tests shall be given by any officer or any agency to any person within fifteen (15) minutes of consumption of any substance by mouth.

If the officer has reasonable grounds and probable cause to believe such person to have been driving a motor vehicle upon the public highways, public roads, and streets of this state while under the influence of intoxicating liquor, such officer shall inform such person that his failure to submit to such chemical test or tests of his breath shall result in the suspension of his privilege to operate a motor vehicle upon the public streets and highways of this state for a period of ninety (90) days in the event such person has not previously been convicted of a violation of Section 63-11-30, or, for a period of one (1) year in the event of any previous conviction of such person under Section 63-11-30. Anyone arrested under the provisions of this chapter shall be informed immediately after being booked that he has the right to telephone for the purpose of requesting legal or medical assistance.

The Commissioner of Public Safety and the State Crime Laboratory created pursuant to Section 45-1-17 are hereby authorized from and after the passage of this section to adopt procedures, rules and regulations, and shall not later than July 1, 1986, provide the necessary equipment to allow the officer to give a preliminary, unofficial "on-the-spot" test to establish whether or not the breath of the driver is free from any alcoholic content before the official chemical analysis test of his breath is made. However, the failure to give the preliminary test shall in no way affect prosecution under this chapter.

SOURCES: Codes, 1942, § 8175-09; Laws, 1971, ch. 515, § 9; 1981, ch. 491, § 1; 1983, ch. 466, § 2; 1988, ch. 568, § 1, eff from and after July 1, 1988.

Editor's Note—

Section 15 of Chapter 491, Laws 1981, provides as follows:

SECTION 15. Prosecutions, convictions and penalties for violations which occurred prior to the effective date of this act under laws amended or repealed by this act, or suspensions or denials of driver's licenses or permits made pursuant to laws amended or repealed by this act, shall not be affected or abated by the provisions of this act.

Section 12 of Chapter 466, Laws, 1983, eff from and after July 1, 1983, provides as follows:

"SECTION 12. Prosecutions, convictions and penalties for violations which occurred prior to July 1, 1983, under laws amended by this act, and suspensions or denials of driver's licenses, permits or privileges made pursuant to laws amended by this act, shall not be affected or abated by the provisions of this act. In addition, convictions which occurred prior to July 1, 1983, under laws amended by this act shall be counted for the purposes of determining the penalties which shall be imposed on any person convicted for a second or subsequent offense under the provisions of the laws amended by this act."

Cross references—

Confiscation of driver's license by arresting officer upon refusal of driver to submit to chemical test under this section, see § 63-11-21.

Penalty for conviction following tests provided for by this section, see § 63-11-30.

Research and Practice References—

7A Am Jur 2d, Automobiles and Highway Traffic §§ 305-308, 377, 378.

61A CJS, Motor Vehicles § 633(2).

2 Am Jur Proof of Facts 585, Blood Tests.

17 Am Jur Proof of Facts 2d 1, Defense to Charge of Driving Under Influence of Alcohol.

Annotations—

Admissibility, in criminal case, of evidence obtained by search by private individual. 36 ALR3d 553.

Admissibility, in criminal cases, of evidence obtained by search conducted by school official or teacher. 49 ALR3d 978.

Driving while intoxicated: duty of law enforcement officer to offer suspect chemical sobriety test under implied consent law. 95 ALR3d 710.

Necessity and sufficiency of proof that tests of blood alcohol concentration were conducted in conformance with prescribed methods. 96 ALR3d 745.

Admissibility in criminal case of blood alcohol test where blood was taken despite defendant's objection or refusal to submit to test. 14 ALR4th 690.

JUDICIAL DECISIONS

Language in the statute that the arresting officer shall inform a driver arrested for driving under the influence of intoxicating liquor that his failure to submit to a chemical test will result in the suspension of his driver's license does not mandate an arresting officer to advise a suspect of the law's existence. *Ewing v State* (1974, Miss) 300 So 2d 916, 95 ALR3d 701.

A city was not liable to a man who was arrested for public intoxication and placed in a drunk tank, even though he was never given an intoxication test and even though it was later determined that he had in fact suffered a stroke, where there was no evidence that the city had either tacitly or explicitly encouraged the improper arrest and detention of stroke victims on charges of pub-

lic drunkenness and where there was no showing that the city had been reckless or grossly negligent in its training, supervising, or disciplining of the officers or jailers involved in plaintiff's arrest and detention; although state law required that an intoximeter test must be given to those arrested for driving while intoxicated, such test was not required for those arrested merely for public drunkenness and liability would not attach on the basis of the city's policy against giving the test to persons in plaintiff's situation. *Reeves v Jackson* (1979, CA5 Miss) 608 F2d 644 (disagreed with by *Grandstaff v Borger* (CA5 Tex) 767 F2d 161, reh den, en banc (CA5 Tex) 779 F2d 1129 and cert den 480 US 916, 94 L Ed 2d 686, 107 S Ct 1369, later app (CA5 Tex) 846 F2d 1016) (applying Mississippi law).

§ 63-11-7. Blood test of dead or unconscious accident victims.

If any person be unconscious or dead as a result of an accident, or unconscious at the time of arrest or apprehension or when the test is to be administered, or is otherwise in a condition rendering him incapable of refusal, such person shall be subjected to a blood test for the purpose of determining the alcoholic content of his blood as provided in this chapter, if the arresting officer has reasonable grounds to believe the person to have been driving a motor vehicle upon the public highways, public roads and streets of this state while under the influence of intoxicating liquor. The results of such test or tests, however, shall not be used in evidence against such person in any court or before any regulatory body without the consent of the person so tested, or, if deceased, such person's legal representative. However, refusal of release of evidence so obtained by such officer or agency will in criminal actions against such person result in the suspension of his or her driver's license for a period of ninety days as provided in this chapter for conscious and capable persons who have refused to submit to such test. Blood may only be withdrawn under the provisions of section 63-11-9. It is the intent of this chapter that blood samples taken under this section shall

be used exclusively for statistical evaluation of accident causes with safeguards established to protect the identity of such victims and to extend the rights of privileged communications to those engaged in taking, handling and evaluating such statistical evidence.

SOURCES: Codes, 1942, § 8175-10; Laws, 1971, ch. 515, § 10, eff from and after April 1, 1972.

Research and Practice References—

7 Am Jur 2d, Automobiles and Highway Traffic § 305-308, 377, 378.

61A CJS, Motor Vehicles § 633(2).

2 Am Jur Proof of Facts 585, Blood Tests.

17 Am Jur Proof of Facts 2d 1, Defense to Charge of Driving Under Influence of Alcohol.

Annotations—

Admissibility in criminal case of blood alcohol test where blood was taken from unconscious driver. 72 ALR3d 325.

JUDICIAL DECISIONS

The privilege created by sections 63-11-7 and 63-11-43 to prevent the introduction into evidence of the results of blood alcohol tests taken pursuant to the provisions of the implied consent laws without the consent of the person tested are inconsistent with the Mississippi Rules of Evidence, Rules 501 and 1103, and therefore must yield. *Whitehurst v State* (1989, Miss) 540 So 2d 1319.

Results of blood-alcohol test performed on defendant after automobile accident resulting in death of 2 people were admissible where officers at scene of accident smelled alcohol and saw several beer cans and whiskey bottle on floorboard, at hospital informed defendant that he was being charged with 2 counts of manslaughter, read defendant his rights, and requested and obtained his consent for blood sample; evidence was sufficient to provide probable cause to search for and seize evidence of intoxication; contention of defendant that test results should not have been admissible because evidence indicated he was unable to consent was rejected, although testimony showed that defendant was belligerent and slurred his speech, was unco-operative, and unsuccessfully resisted efforts to procure blood sample. *Whitley v State* (1987, Miss) 511 So 2d 929.

Blood alcohol test results were admissible in civil case when performed on driver who died as result of accident, both because decedent's representative waived statutory protection and results of test were submitted in

defense of person tested, Miss Code §§ 63-11-7 and 63-11-43 (1972) being intended to protect interests of person submitted to blood alcohol test. *Clark v Pascagoula* (1987, Miss) 507 So 2d 70.

Blood alcohol test administered as part of medical treatment is admissible in civil action where driver from whom blood is taken has made contractual waiver of physician-patient privilege. *Edwards v Ellis* (1985, Miss) 478 So 2d 282.

Where decedent ran into a truck stopped on highway, and where, several hours later, after he had been pronounced dead, a blood sample was taken from his heart and found to contain a blood alcohol level of .17, the trial judge, pursuant to § 63-11-7, properly refused to allow the defense in any way to present to the jury the results of the blood test. *Stong v Freeman Truck Line, Inc.* (1984, Miss) 456 So 2d 698.

In a prosecution for involuntary manslaughter arising out of a traffic accident, in which the defendant contended that the deceased caused the accident by suddenly turning into the defendant's lane of traffic, the trial court committed reversible error in refusing to permit the introduction into evidence of the results of the blood alcohol test given to the deceased. This section does not prohibit the use of such evidence, over the objection of the legal representative, in favor of an accused in a criminal trial. *McNamee v State* (1975, Miss) 313 So 2d 392.

§ 63-11-9. Persons who may take blood samples under Section 63-11-7.

Under section 63-11-7, only a physician, mortician, registered nurse or

clinical laboratory technologist or clinical laboratory technician acting at the request of a law enforcement officer may withdraw blood for the purpose of determining the alcoholic content therein. This limitation shall not apply to the taking of breath or urine specimens.

SOURCES: Codes, 1942, § 8175-17; Laws, 1971, ch. 515, § 17, eff from and after April 1, 1972.

Research and Practice References—

7A Am Jur 2d, Automobiles and Highway Traffic §§ 306, 307.

Annotations—

Drunk driving: motorist's right to private sobriety test. 45 ALR4th 11.

§ 63-11-11. Urine specimens.

If the test given under the provisions of this chapter is a chemical test of urine, the person tested shall be given such privacy in the taking of the urine specimen as will insure the accuracy of the specimen and, at the same time, maintain the dignity of the individual involved.

SOURCES: Codes, 1942, § 8175-19; Laws, 1971, ch. 515, § 19, eff from and after April 1, 1972.

Research and Practice References—

7A Am Jur 2d, Automobiles and Highway Traffic §§ 306, 307.

Annotations—

Necessity and sufficiency of proof that tests of blood alcohol concentration were conducted in conformance with prescribed methods. 96 ALR3d 745.

Drunk driving: motorist's right to private sobriety test. 45 ALR4th 11.

False light invasion of privacy-accusation or innuendo as to criminal acts. 58 ALR4th 902.

§ 63-11-13. Accused may have additional test administered by person of his choice; effect of failure to obtain.

The person tested may, at his own expense, have a physician, registered nurse, clinical laboratory technologist or clinical laboratory technician or any other qualified person of his choosing administer a test, approved by the state crime laboratory created pursuant to section 45-1-17, in addition to any other test, for the purpose of determining the amount of alcohol in his blood at the time alleged as shown by chemical analysis of his blood, breath or urine. The failure or inability to obtain an additional test by such arrested person shall not preclude the admissibility in evidence of the test taken at the direction of a law enforcement officer.

SOURCES: Codes, 1942, § 8175-18; Laws, 1971, ch. 515, § 18; 1981, ch. 491, § 2, eff from and after July 1, 1981.

Editor's Note—

Section 15 of Chapter 491, Laws 1981, provides as follows:

SECTION 15. Prosecutions, convictions and penalties for violations which occurred prior to the effective date of this act under laws amended or repealed by this act, or suspensions or denials of driver's licenses or permits made pursuant to laws amended or repealed by this act, shall not be affected or abated by the provisions of this act.

Research and Practice References—

7A Am Jur 2d, Automobiles and Highway Traffic §§ 306, 307.

Annotations—

Drunk driving: motorist's right to private sobriety test. 45 ALR4th 11.

§ 63-11-15. Availability of test result to accused or his attorney.

Upon the written request of the person tested, or his attorney, full information concerning the test taken at the direction of the law enforcement officer shall be made available to him or to his attorney.

SOURCES: Codes, 1942, § 8175-20; Laws, 1971, ch. 515, § 20, eff from and after April 1, 1972.

§ 63-11-17. Liability for administering blood test.

No physician, registered nurse, hospital trustee, mortician, clinical laboratory technologist, clinical laboratory technician, hospital, clinic, or funeral home shall incur any civil or criminal liability as the result of the proper administration of a test or chemical analysis of a person's breath, blood or urine when requested in writing by a law enforcement officer to administer such a test or perform such chemical analysis.

SOURCES: Codes, 1942, § 8175-21; Laws, 1971, ch. 515, § 21; 1973, ch. 354, § 1, eff from and after passage (approved March 23, 1973).

§ 63-11-19. Tests to be performed according to approved methods; certification of administrators.

A chemical analysis of the person's breath, blood or urine, to be considered valid under the provisions of this section, shall have been performed according to methods approved by the State Crime Laboratory created pursuant to Section 45-1-17 and the Commissioner of Public Safety and performed by an individual possessing a valid permit issued by the State Crime Laboratory for making such analysis. The State Crime Laboratory and the Commissioner of Public Safety are authorized to approve satisfactory techniques or methods, to ascertain the qualifications and competence of individuals to conduct such analyses, and to issue permits which shall be subject to termination or revocation at the discretion of the State Crime Laboratory. The State Crime Laboratory shall not approve the permit required herein for any law enforcement officer other than a member of the State Highway Patrol, a sheriff or his deputies, a city policeman, officer of a state-supported institution of higher learning campus police force, national park ranger, national park ranger technician or a military policeman stationed at a United States military base located within this state other than a military policeman of the Army or Air National Guard or of Reserve Units of the Army, Air Force, Navy or Marine Corps.

The State Crime Laboratory shall make periodic, but not less frequently than quarterly, tests of the methods, machines or devices used in making chemical analysis of a person's breath as shall be necessary to insure the accuracy thereof, and shall issue their certificate to verify the accuracy of the same.

SOURCES: Codes, 1942, § 8175-16; Laws, 1971, ch. 515, § 16; 1978, ch. 526, § 1; 1981, ch. 491, § 3; 1988, ch. 568, § 2, eff from and after July 1, 1988.

Editor's Note—

Section 15 of Chapter 491, Laws 1981, provides as follows:

SECTION 15. Prosecutions, convictions and penalties for violations which occurred prior to the effective date of this act under laws amended or repealed by this act, or suspensions or denials of driver's licenses or permits made pursuant to laws amended or repealed by this act, shall not be affected or abated by the provisions of this act.

Research and Practice References—

7A Am Jur 2d, Automobiles and Highway Traffic §§ 306, 307.

Annotations—

Drunk driving: motorist's right to private sobriety test. 45 ALR4th 11.

JUDICIAL DECISIONS

A city policeman was fully qualified to administer a breath test for alcohol content under § 63-11-19, where he had received training at the Mississippi Highway Safety Patrol under the Mississippi Department of Public Safety on the use of the intoxilyzer and its predecessor machine, the intoximeter, had taken a written examination on which he made a correct score of more than 85 percent, and held a permit from the Department of Public Safety to conduct tests on this machine; furthermore, the result of the test was properly admitted as competent evidence, where the officer precisely followed the procedure recommended by the Department of Public Safety in conducting the examination, the machine had been checked for accuracy only two days prior to the test, and the officer

scrupulously followed the Department of Public Safety checklist of steps to take in administering the test, in spite of defendant's claim that the officer failed to determine that defendant's mouth was empty at the time of administering the test. *Williams v State* (1983, Miss) 434 So 2d 1340.

A chemical analysis of defendant's blood performed by an individual not possessing a valid permit issued by the State Board of Health for making such analysis (Code 1972 § 63-11-19) was nevertheless admissible as other competent evidence under Code 1972 § 63-11-39 where evidence detailed in opinion established that test was reasonable. *Cutchens v State* (1975, Miss) 310 So 2d 273, cert den 423 US 1061, 46 L Ed 2d 652, 96 S Ct 799.

§ 63-11-21. Refusal to submit to test shall result in confiscation of driver's license.

If a person refuses upon the request of a law enforcement officer to submit to a chemical test of his breath designated by the law enforcement agency as provided in section 63-11-5, none shall be given, but the officer shall at that point demand the driver's license of the person, who shall deliver his driver's license into the hands of the officer. The officer shall give the driver a receipt for his license on forms prescribed and furnished by the commissioner of public safety. The officer shall forward the driver's license together with a sworn report to the commissioner of public safety stating that he had reasonable grounds and probable cause to believe the person had been driving a motor vehicle upon the public highways, public roads and streets of this state while under the influence of intoxicating liquor, stating such grounds, and that the person had refused to submit to the chemical test of his breath upon request of the law enforcement officer.

SOURCES: Codes, 1942, § 8175-11; Laws, 1971, ch. 515, § 11; 1981, ch. 491, § 4; 1983, ch. 466, § 3, eff from and after July 1, 1983.

Editor's Note—

Section 15 of Chapter 491, Laws 1981, provides as follows:

SECTION 15. Prosecutions, convictions and penalties for violations which occurred prior to the effective date of this act under laws amended or repealed by this act, or suspensions or

denials of driver's licenses or permits made pursuant to laws amended or repealed by this act, shall not be affected or abated by the provisions of this act.

Section 12 of Chapter 466, Laws, 1983, eff from and after July 1, 1983, provides as follows:

"SECTION 12. Prosecutions, convictions and penalties for violations which occurred prior to July 1, 1983, under laws amended by this act, and suspensions or denials of driver's licenses, permits or privileges made pursuant to laws amended by this act, shall not be affected or abated by the provisions of this act. In addition, convictions which occurred prior to July 1, 1983, under laws amended by this act shall be counted for the purposes of determining the penalties which shall be imposed on any person convicted for a second or subsequent offense under the provisions of the laws amended by this act."

Cross references—

Implied consent to chemical test, see § 63-11-5.

Review by commissioner of arresting officer's sworn report, see § 63-11-23.

Research and Practice References—

7A Am Jur 2d, Automobiles and Highway Traffic §§ 122 et seq.

60 CJS, Motor Vehicles § 164.16.

Annotations—

Request before submitting to chemical sobriety test to communicate with counsel as refusal to take test. 97 ALR3d 852.

Admissibility in criminal case of evidence that accused refused to take test of intoxication. 26 ALR4th 1112.

§ 63-11-23. Review and notice of suspension; seizure of license where test indicates blood alcohol concentration of .10 percent or more; temporary permit to drive; representation of state in proceedings.

(1) The Commissioner of Public Safety, or his authorized agent, shall review the sworn report by a law enforcement officer as provided in Section 63-11-21. If upon such review the Commissioner of Public Safety, or his authorized agent, finds (a) that the law enforcement officer had reasonable grounds and probable cause to believe the person had been driving a motor vehicle upon the public highways, public roads and streets of this state while under the influence of intoxicating liquor; (b) that the person was placed under arrest after a refusal to take the test; (c) that he refused to submit to the test upon request of the officer; and (d) that the person was informed that his license to drive would be suspended or denied if he refused to submit to the test, then the Commissioner of Public Safety, or his authorized agent, shall give notice to the licensee that his license or permit to drive, or any nonresident operating privilege, shall be suspended thirty (30) days after the date of such notice for a period of ninety (90) days in the event such person has not previously been convicted of a violation of Section 63-11-30, or, for a period of one (1) year in the event of any previous conviction of such person under Section 63-11-30. In the event the commissioner or his authorized agent determines that the license should not be suspended, he shall return the license or permit to the licensee.

The notice of suspension shall be in writing by registered or certified mail and shall have been given when deposited in the United States mail, addressed to the licensee at his address as it appears on his driver's license or at his last known address.

(2) If the chemical testing of a person's breath indicates the blood alcohol

concentration was ten one-hundredths percent (.10%) or more by weight volume of alcohol, the arresting officer shall seize the license and give the driver a receipt for his license on forms prescribed by the Commissioner of Public Safety and shall promptly forward the license together with a sworn report to the Commissioner of Public Safety. The receipt given a person as provided herein shall be valid as a permit to operate a motor vehicle for a period of thirty (30) days in order that the defendant be processed through the court having original jurisdiction and a final disposition had; provided, however, that if the defendant makes a written request directed to the trial judge requesting that a trial be held on the matter within such thirty-day period and such defendant is not afforded a trial within such period, then the Commissioner of Public Safety shall issue such defendant a permit to drive that shall be valid for an additional thirty (30) days. If the defendant makes a written request to the trial judge requesting that a trial be held on the matter prior to the expiration of such permit to drive and such defendant is not afforded a trial within such period, then the Commissioner of Public Safety shall issue such defendant a permit to drive for an additional thirty (30) days. In no event shall a defendant be permitted to drive under the provisions of this subsection for more than ninety (90) days after the initial seizure of such defendant's license. The fact that the defendant has the right to request a trial and the effect of a denial of such request shall be plainly stated on the face of any receipt or permit to drive issued such defendant. If a receipt or permit to drive issued pursuant to the provisions of this subsection expires without a trial having been requested as provided for in this subsection, then the Commissioner of Public Safety or his authorized agent shall suspend the license or permit to drive or any nonresident operating privilege for the applicable period of time as provided for in subsection (1) of this section.

(3) If the person is a resident without a license or permit to operate a motor vehicle in this state, the Commissioner of Public Safety, or his authorized agent, shall deny to the person the issuance of a license or permit for a period of one (1) year beginning thirty (30) days after the date of notice of such suspension.

(4) It shall be the duty of the county prosecuting attorney, an attorney employed under the provisions of Section 19-3-49, or in the event there is no such prosecuting attorney for the county, the duty of the district attorney to represent the state in any hearing held under the provisions of Section 63-11-25, or under the provisions of Section 63-11-37(2).

SOURCES: Codes, 1942, § 8175-12; Laws, 1971, ch. 515, § 12; 1981, ch. 491, § 5; 1983, ch. 466, § 4; 1989, ch. 482, § 25, eff from and after July 1, 1989.

Editor's Note—

Subsection (2) of § 63-11-37, referred to in subsection (4) of this section, was repealed effective July 1, 1987.

Section 15 of Chapter 491, Laws 1981, provides as follows:

"SECTION 15. Prosecutions, convictions and penalties for violations which occurred prior to the effective date of this act under laws amended or repealed by this act, or suspensions or denials of driver's licenses or permits made pursuant to laws amended or repealed by this act, shall not be affected or abated by the provisions of this act."

Section 12 of Chapter 466, Laws, 1983, eff from and after July 1, 1983, provides as follows:

"SECTION 12. Prosecutions, convictions and penalties for violations which occurred prior to July 1, 1983, under laws amended by this act, and suspensions or denials of driver's licenses, permits or privileges made pursuant to laws amended by this act, shall not be affected or abated by the provisions of this act. In addition, convictions which occurred prior to July 1, 1983, under laws amended by this act shall be counted for the purposes of determining the penalties which shall be imposed on any person convicted for a second or subsequent offense under the provisions of the laws amended by this act."

Cross references—

Right to petition for review of decision of commissioner of public safety, see § 63-11-25

Additional suspension or denial of license or permit, see § 63-11-30.

Research and Practice References—

7A Am Jur 2d, Automobiles and Highway Traffic §§ 134 et seq.

60 CJS, Motor Vehicles §§ 164.26 et seq.

JUDICIAL DECISIONS

Section 63-11-23 is penal in nature and effect, and it will be construed strictly though reasonably against infliction of penalty. *State v Martin* (1986, Miss) 495 So 2d 501.

Before the license of one subject to § 63-11-23(2) is effectively suspended, the Commission of Public Safety or his authorized agent must

(1) in the appropriate administrative manner, take the affirmative step of suspending that person's license or permit to drive, and (2) give the driver notice of the suspension by registered or certified mail as provided in subsection (1) of the statute. *State v Martin* (1986, Miss) 495 So 2d 501

§ 63-11-25. Appeals; driving privilege suspended pending outcome.

If the forfeiture, suspension or denial of issuance is sustained by the commissioner of public safety, or his duly authorized agent pursuant to subsection (1) of section 63-11-23, upon such hearing, the party aggrieved may file within ten (10) days after the rendition of such decision a petition in the circuit or county court of his residence for review of such decision and such hearing upon review shall proceed as a trial de novo before the court without a jury. Provided further, that no such party shall be allowed to exercise the driving privilege while any such appeal is pending.

SOURCES: Codes, 1942, § 8175-13; Laws, 1971, ch. 515, § 13; 1983, ch. 466, § 5, eff from and after July 1, 1983.

Editor's Note—

Section 12 of Chapter 466, Laws, 1983, eff from and after July 1, 1983, provides as follows:

"SECTION 12. Prosecutions, convictions and penalties for violations which occurred prior to July 1, 1983, under laws amended by this act, and suspensions or denials of driver's licenses, permits or privileges made pursuant to laws amended by this act, shall not be affected or abated by the provisions of this act. In addition, convictions which occurred prior to July 1, 1983, under laws amended by this act shall be counted for the purposes of determining the penalties which shall be imposed on any person convicted for a second or subsequent offense under the provisions of the laws amended by this act."

Cross references—

Representation of state in proceedings held under this section, see § 63-11-23.

Research and Practice References—

7A Am Jur 2d, Automobiles and Highway Traffic § 144.

60 CJS, Motor Vehicles §§ 164.35 et seq.

§ 63-11-26. Final actions which foreclose judicial review or appeal.

When the commissioner of public safety, or his authorized agent, shall

suspend the driver's license or permit to drive of a person or shall deny the issuance of a license or permit to a person as provided in section 63-11-30, the person shall not be entitled to any judicial review of or appeal from the actions of the commissioner. A final conviction under said section shall finally adjudicate the privilege of such convicted person to operate a motor vehicle upon the public highways, public roads and streets of this state.

SOURCES: Laws, 1981, ch. 491, § 9; 1983, ch. 466, § 6, eff from and after July 1, 1983.

Editor's Note—

Section 15 of Chapter 491, Laws 1981, provides as follows:

SECTION 15. Prosecutions, convictions and penalties for violations which occurred prior to the effective date of this act under laws amended or repealed by this act, or suspensions or denials of driver's licenses or permits made pursuant to laws amended or repealed by this act, shall not be affected or abated by the provisions of this act.

Section 12 of Chapter 466, Laws, 1983, eff from and after July 1, 1983, provides as follows:

"SECTION 12. Prosecutions, convictions and penalties for violations which occurred prior to July 1, 1983, under laws amended by this act, and suspensions or denials of driver's licenses, permits or privileges made pursuant to laws amended by this act, shall not be affected or abated by the provisions of this act. In addition, convictions which occurred prior to July 1, 1983, under laws amended by this act shall be counted for the purposes of determining the penalties which shall be imposed on any person convicted for a second or subsequent offense under the provisions of the laws amended by this act."

§ 63-11-27. Suspension of nonresident drivers privilege; notification of authorities in home state.

When it has been finally determined under the procedures of sections 63-11-21 to 63-11-25, that a nonresident's privilege to operate a motor vehicle in this state has been suspended, the commissioner, or his duly authorized agent, shall give information in writing of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which he has a license.

SOURCES: Codes, 1942, § 8175-14; Laws, 1971, ch. 515, § 14, eff from and after April 1, 1972.

Annotations—

Necessity and sufficiency of proof that tests of blood alcohol concentration were conducted in conformance with prescribed methods. 96 ALR3d 745.

§ 63-11-29. [Codes, 1942, §§ 8175-02, 8175-03; Laws, 1971, ch. 515, §§ 2, 3] Repealed by Laws, 1983, ch. 466, § 15, eff from and after July 1, 1983.

Editor's Note—

Former section 63-11-29 made it unlawful for a habitual user of drugs or a person under the influence of drugs to operate a vehicle, and provided penalties for a violation.

§ 63-11-30. Penalties for operation of vehicle while under influence of intoxicating liquor or other substance that impairs ability to operate vehicle; where violation causes injury or death to another person.

(1) It is unlawful for any person to drive or otherwise operate a vehicle within this state who (a) is under the influence of intoxicating liquor; (b) is under the influence of any other substance which has impaired such

person's ability to operate a motor vehicle; or (c) has ten one-hundredths percent (.10%) or more by weight volume of alcohol in the person's blood based upon milligrams of alcohol per one hundred (100) cubic centimeters of blood as shown by a chemical analysis of such person's breath, blood or urine administered as authorized by this chapter.

(2)(a) Upon conviction of any person for the first offense of violating subsection (1) of this section where chemical tests provided for under Section 63-11-5 were given, or where chemical test results are not available, such person shall be fined not less than Two Hundred Fifty Dollars (\$250.00) nor more than One Thousand Dollars (\$1,000.00) or imprisoned for not more than twenty-four (24) hours in jail, or both; and the court shall order such person to attend and complete an alcohol safety education program as provided in Section 63-11-32. In addition, the Department of Public Safety, the Commissioner of Public Safety or his duly authorized agent shall, after conviction and upon receipt of the court abstract, suspend the driver's license and driving privileges of such person until such person attends and successfully completes an alcohol safety education program as herein provided or for a period of ninety (90) days, whichever is greater; provided, however, in no event shall such period of suspension exceed one (1) year.

The county court or circuit court having jurisdiction, on petition, may reduce the suspension of driving privileges under this section if the denial of which would constitute a hardship on the offender. Provided, however, no court may issue such an order reducing the suspension of driving privileges under this subsection until thirty (30) days has elapsed from the effective date of the suspension. When the petition is filed, such person shall pay to the circuit clerk of the court where the petition is filed a fee of Twenty Dollars (\$20.00) for each year, or portion thereof, of license revocation or suspension remaining under the original sentence, which shall be deposited into the State General Fund to the credit of a special fund hereby created in the State Treasury to be used for alcohol or drug abuse treatment and education, upon appropriation by the Legislature. This fee shall be in addition to any other court costs or fees required for the filing of petitions.

Each petition filed under the provisions of this subsection shall contain the specific facts which the petitioner alleges to constitute a hardship and the driver's license number of the petitioner. If the court determines that the period of suspension should be reduced, it may enter a temporary order which will allow the petitioner to operate a motor vehicle. A hearing may be held on any petition filed under this subsection after written notice if the petitioner, the Commissioner of Public Safety or the attorney designated to represent the state requests such hearing. At such hearing, the court may enter a permanent order reducing the period of suspension and allowing

the petitioner to operate a motor vehicle in strict conformity with the provisions of this section. If no hearing is held within thirty (30) days of the issuance of the temporary order reducing the period of suspension, such order shall automatically be a permanent order and the court record shall so reflect.

Any temporary or permanent order entered under the provisions of this subsection shall contain the specific grounds upon which hardship was determined, and shall order the petitioner to attend and complete an alcohol safety education program as provided in Section 63-11-32, Mississippi Code of 1972. A certified copy of such order shall be delivered to the Commissioner of Public Safety by the clerk of the court within five (5) days of the entry of the order. The certified copy of such order shall serve as the petitioner's authority to operate a motor vehicle and the order shall contain information which will identify the petitioner, including, but not limited to, date of birth, hair color, eye color, weight and height, mailing address, street address, Social Security number and driver's license number of the petitioner.

- (b) Upon any second conviction of any person violating subsection (1) of this section, the offenses being committed within a period of five (5) years, such person shall be fined not less than Six Hundred Dollars (\$600.00) nor more than One Thousand Dollars (\$1,000.00) and shall be imprisoned not less than forty-eight (48) consecutive hours nor more than one (1) year or sentenced to community service work for not less than ten (10) days nor more than one (1) year. Except as may be otherwise provided by paragraph (e) of this subsection, the Commissioner of Public Safety shall suspend the driver's license of such person for two (2) years.
- (c) For any third conviction of any person violating subsection (1) of this section, the offenses being committed within a period of five (5) years, such person shall be fined not less than Eight Hundred Dollars (\$800.00) nor more than One Thousand Dollars (\$1,000.00) and shall be imprisoned not less than thirty (30) days nor more than one (1) year. Except as may be otherwise provided by paragraph (f) of this subsection, the Commissioner of Public Safety shall suspend the driver's license of such person for five (5) years.
- (d) Any fourth or subsequent violation of subsection (1) of this section shall be a felony offense, and upon conviction, the offenses being committed within a period of five (5) years, such person shall be fined not less than Two Thousand Dollars (\$2,000.00) nor more than Five Thousand Dollars (\$5,000.00) and shall be imprisoned not less than ninety (90) days nor more than five (5) years in the State Penitentiary. Except as may be otherwise provided by paragraph (f) of this subsection, the Commissioner of Public Safety shall suspend the driver's license of such person for five (5) years.
- (e) Any person convicted of a second violation of subsection (1) of this

section, may have the period that his driver's license is suspended reduced if such person receives an in-depth diagnostic assessment, and as a result of such assessment is determined to be in need of treatment of his alcohol and/or drug abuse problem and successfully completes treatment of his alcohol and/or drug abuse problem at a program site certified by the Department of Mental Health. Such person shall be eligible for reinstatement of his driving privileges upon the successful completion of such treatment or a period of one (1) year after such person's driver's license is suspended, whichever is greater. Each person who receives a diagnostic assessment shall pay a fee representing the cost of such assessment. Each person who participates in a treatment program shall pay a fee representing the cost of such treatment.

- (f) Any person convicted of a third or subsequent violation of subsection (1) of this section may enter an alcohol and/or drug abuse program approved by the Department of Mental Health for treatment of such person's alcohol and/or drug abuse problem. If such person successfully completes such treatment, such person shall be eligible for reinstatement of his driving privileges after a period of three (3) years after such person's driver's license is suspended.

(3) Every person convicted of operating a vehicle while under the influence of intoxicating liquor or any other substance which has impaired such person's ability to operate a motor vehicle where the person (a) refused a law enforcement officer's request to submit to a chemical test of his breath as provided in this chapter, or (b) was unconscious at the time of a chemical test and refused to consent to the introduction of the results of such test in any prosecution, shall be punished consistent with the penalties prescribed herein for persons submitting to the test, except that there shall be an additional suspension of driving privileges as follows:

The Commissioner of Public Safety or his authorized agent shall suspend the driver's license or permit to drive or deny the issuance of a license or permit to such person as provided for first, second and third or subsequent offenders in subsection (2) of this section. Such suspension shall be in addition to any suspension imposed pursuant to subsection (1) of Section 63-11-23.

(4) Every person who operates any motor vehicle in violation of the provisions of subsection (1) of this section and who in a negligent manner causes the death of another or mutilates, disfigures, permanently disables or destroys the tongue, eye, lip, nose or any other limb or member of another shall, upon conviction, be guilty of a felony and shall be committed to the custody of the State Department of Corrections for a period of time not to exceed ten (10) years.

SOURCES: Laws, 1981, ch. 491, § 6; 1983, ch. 466, §§ 7, 13; 1989, ch. 565, § 1, eff from and after July 1, 1989.

Editor's Note—

Section 15 of Chapter 491, Laws, 1981, provides as follows:

"SECTION 15. Prosecutions, convictions and penalties for violations which occurred prior to

the effective date of this act under laws amended or repealed by this act, or suspensions or denials of driver's licenses or permits made pursuant to laws amended or repealed by this act, shall not be affected or abated by the provisions of this act".

Section 12 of Chapter 466, Laws, 1983, eff from and after July 1, 1983, provides as follows:

"SECTION 12. Prosecutions, convictions and penalties for violations which occurred prior to July 1, 1983, under laws amended by this act, and suspensions or denials of driver's licenses, permits or privileges made pursuant to laws amended by this act, shall not be affected or abated by the provisions of this act. In addition, convictions which occurred prior to July 1, 1983, under laws amended by this act shall be counted for the purposes of determining the penalties which shall be imposed on any person convicted for a second or subsequent offense under the provisions of the laws amended by this act."

Cross references—

Guaranteed arrest bond certificate in lieu of cash bail for certain traffic violations, see § 63-9-27.

Warnings of consequences of refusal to submit to chemical tests, see § 63-11-5.

Review by commissioner of public safety of confiscation of license of driver who refused to submit to chemical test, see § 63-11-23.

Finality of commissioner's action in suspending or denying driving privilege of one convicted under this section, see § 63-11-26.

Assessments imposed upon violation of this section to fund Mississippi Alcohol Safety Education Program, see § 63-11-32.

Bond forfeiture operating, for purposes of this section, as a conviction, see § 63-11-37(1).

Duty of trial judge, upon conviction of driver under this section, to mail copy of abstract of court record to the commissioner of public safety, see § 63-11-37(1).

Prohibition on suspension by justice courts of fines imposed under the Implied Consent Law, see § 99-19-25.

Research and Practice References—

19 Am Jur Trials 123, Defense on Charge of Driving While Intoxicated.

Annotations—

What amounts to violation of drunken-driving statute in officer's "presence" or "view" so as to permit warrantless arrest. 74 ALR3d 1138.

What constitutes driving, operating, or being in control of motor vehicle for purposes of driving while intoxicated statutes. 93 ALR3d 7.

Necessity and sufficiency of proof that tests of blood alcohol concentration were conducted in conformance with prescribed methods. 96 ALR3d 745.

Reckless driving as lesser included offense of driving while intoxicated or similar charge. 10 ALR4th 1252.

Validity, construction, and application of statutes directly proscribing driving with blood-alcohol level in excess of established percentage. 54 ALR4th 149.

Alcohol-related vehicular homicide: nature and elements of offense. 64 ALR4th 166.

Passenger's liability to vehicular accident victim for harm caused by intoxicated motor vehicle driver. 64 ALR4th 272.

Driving while intoxicated: "choice of evils" defense that driving was necessary to protect life or property. 64 ALR4th 298.

Cough medicine as "intoxicating liquor" under DUI statute. 65 ALR4th 1238.

JUDICIAL DECISIONS

1. In general.
- 2-5. [Reserved for future use].
6. Under former laws.

1. In general

Where a defendant was charged with misdemeanor driving under the influence of alcohol, forfeiture of his bond and entry of a

sentence of guilty into the docket constituted a conviction such that a subsequent trial for felonious driving under the influence was barred by the principle of double jeopardy. *Bennett v State* (1988, Miss) 528 So 2d 815.

Section 63-11-30, which imposes a maximum 5-year penalty for the operation of a vehicle in violation of the implied consent law coupled with negligently causing the death or mutilation of another, is not arbitrary and

does not constitute cruel and unusual punishment. *Banks v State* (1988, Miss) 525 So 2d 399.

Evidence that the defendant ran a stop sign while intoxicated and collided with a truck resulting in the death of a passenger was not sufficient to prove manslaughter by culpable negligence under § 97-3-47 but was sufficient to support a conviction for the lesser included offense of negligently killing another while under the influence of an intoxicating liquor pursuant to § 63-11-30. *Childs v State* (1988, Miss) 521 So 2d 882.

Trial judge acted without statutory authority in suspending defendant's driving privileges for 5 years, and imposed sentence exceeding maximum penalty provided by law, where defendant was convicted of vehicular homicide following head-on collision, because statute provided for period of suspension of driving privileges varying from 90 days to 3 years. *Slymaker v State* (1987, Miss) 513 So 2d 921.

2-5. [Reserved for future use]

§ 63-11-31. [Codes, 1942, §§ 8175-04, 8175-05; Laws, 1971, ch. 515, §§ 4, 5] Repealed by Laws, 1981, ch. 491, § 16, eff from and after July 1, 1981.

Editor's Note—

Former section 63-11-31 made it unlawful to operate a vehicle while under the influence of intoxicating liquor, and provided the penalties for a violation.

Section 15 of Chapter 491, Laws, 1981, provides as follows:

SECTION 15. Prosecutions, convictions and penalties for violations which occurred prior to the effective date of this act under laws amended or repealed by this act, or suspensions or denials of driver's licenses or permits made pursuant to laws amended or repealed by this act, shall not be affected or abated by the provisions of this act.

§ 63-11-32. Driver improvement program for first offenders convicted of driving while intoxicated or under influence of another substance which impairs ability to operate motor vehicle; assessments in addition to monetary penalties; disposition of funds.

(1) The state department of public safety in conjunction with the governor's highway safety program, the state board of health or any other state agency or institution shall develop and implement a driver improvement program for persons identified as first offenders convicted of driving while under the influence of intoxicating liquor or another substance which had impaired such person's ability to operate a motor vehicle, including provision for referral to rehabilitation facilities.

(2) The program shall consist of a minimum of ten (10) hours of instruction. Each person who participates shall pay a nominal fee to defray a portion of the cost of the program.

(3) In addition to any monetary penalties imposed by section 63-11-30, there shall be collected a five dollar (\$5.00) assessment from any person

6. Under former laws

One need not be legally intoxicated in order for question of impairment of reaction time by intoxicating liquors to be properly submitted to jury in negligence action; driver's admission to having consumed several beers in hours preceding traffic accident forms sufficient evidentiary basis for submission of question to jury notwithstanding absence of alcohol on driver's breath and absence of liquor bottles in driver's car. *Mills v Nichols* (1985, Miss) 467 So 2d 924.

Being under the influence of marijuana is not a designated criminal offense under our statutes except in conjunction with the operation of a vehicle. In *Interest of Dudley* (1975, Miss) 310 So 2d 919.

Driving an automobile on a highway under the influence of intoxicants, or at a high and unlawful rate of speed, is not only dangerous but is negligence per se, and if such negligence contributes to an injury the defendant is liable in damages. *Freeze v Taylor*, (1972, Miss) 257 So 2d 509.

upon whom a court imposes a fine or bail forfeiture pursuant to the provisions of this chapter. Such assessment shall be forwarded to the state treasurer who shall deposit such assessment to the credit of a special fund hereby created in the state treasury and designated the Mississippi Alcohol Safety Education Program Fund. Monies deposited in such fund shall be expended by the board of trustees of state institutions of higher learning as authorized and appropriated by the legislature to defray the costs of the Mississippi Alcohol Safety Education Program operated pursuant to the provisions of this section. Any revenue in the fund which is not encumbered at the end of the fiscal year shall lapse to the general fund.

(4) In addition to the assessment imposed under the provisions of subsection (3) of this section and in addition to any monetary penalties imposed by section 63-11-30, there shall be collected a ten dollar (\$10.00) assessment from any person upon whom a court imposes a fine or bail forfeiture pursuant to the provisions of this chapter. Such assessment shall be deposited by the state treasurer to the credit of a special fund hereby created in the state treasury and designated the federal-state alcohol program fund. Monies deposited in such fund shall be expended by the governor's office of federal-state programs, department of criminal justice planning, highway safety division, as authorized and appropriated by the legislature to defray the costs of alcohol and traffic safety programs. Any revenue in the fund which is not encumbered at the end of the fiscal year shall lapse to the general fund.

SOURCES: Laws, 1973, ch. 408, § 1; 1979, ch. 305; 1981, ch. 491, § 7; 1983, ch. 466, § 8, eff from and after July 1, 1983.

Editor's Note—

Section 15 of Chapter 491, Laws, 1981, provides as follows:

SECTION 15. Prosecutions, convictions and penalties for violations which occurred prior to the effective date of this act under laws amended or repealed by this act, or suspensions or denials of driver's licenses or permits made pursuant to laws amended or repealed by this act, shall not be affected or abated by the provisions of this act.

Section 12 of Chapter 466, Laws, 1983, eff from and after July 1, 1983, provides as follows:

SECTION 12. Prosecutions, convictions and penalties for violations which occurred prior to July 1, 1983, under laws amended by this act, and suspensions or denials of driver's licenses, permits or privileges made pursuant to laws amended by this act, shall not be affected or abated by the provisions of this act. In addition, convictions which occurred prior to July 1, 1983, under laws amended by this act shall be counted for the purposes of determining the penalties which shall be imposed on any person convicted for a second or subsequent offense under the provisions of the laws amended by this act."

Cross references—

Court ordering completion of alcohol safety education program by one convicted of driving while intoxicated or under influence of other substance which impairs ability to operate motor vehicle, see § 63-11-30.

§§ 63-11-33, 63-11-35. [Codes, 1942, §§ 8175-04, 8175-06, 8175-07; Laws, 1971, ch. 515, §§ 4, 6, 7] Repealed by Laws, 1981, ch. 491, § 16, eff from and after July 1, 1981.

Editor's Note—

Former section 63-11-33 made it unlawful to operate a vehicle under the influence of intoxicating liquor, and provided the penalties where chemical test results were not available.

Former section 63-11-35 made it unlawful to operate a vehicle while intoxicated, and provided the penalties for a violation.

Section 15 of Chapter 491, Laws, 1981, provides as follows:

SECTION 15. Prosecutions, convictions and penalties for violations which occurred prior to the effective date of this act under laws amended or repealed by this act, or suspensions or denials of driver's licenses or permits made pursuant to laws amended or repealed by this act, shall not be affected or abated by the provisions of this act.

§ 63-11-37. Copy of conviction record sent to commissioner; reduction of revocation or suspension period; additional restrictions on driving privileges.

(1) It shall be the duty of the trial judge, upon conviction of any person under Section 63-11-30, to mail a copy of the abstract of the court record within five (5) days to the Commissioner of Public Safety at Jackson, Mississippi. The trial judge in municipal and justice courts shall show on the docket and the trial judge in courts of record shall show on the minutes:

- (a) Whether or not a chemical test was given and the results of the test;
- (b) Where conviction was based in whole or in part on the results of such a test.

The abstract of the court record shall show the date of the conviction, the results of the test if there was one and the penalty so that a record of same may be made by the Department of Public Safety.

For the purposes of Section 63-11-30, a bond forfeiture shall operate as and be considered as a conviction.

(2) [Repealed]

(3) [Repealed]

(4) [Repealed]

(5) Subsections (2), (3) and (4) of this section shall stand repealed on July 1, 1987.

SOURCES: Codes, 1942, § 817b-08; Laws, 1971, ch. 515, § 8; 1981, ch. 491, § 8; 1983, ch. 466, § 9; 1985, ch. 346, eff from and after July 1, 1985.

Editor's Note—

Section 15 of Chapter 491, Laws 1981, provides as follows:

SECTION 15. Prosecutions, convictions and penalties for violations which occurred prior to the effective date of this act under laws amended or repealed by this act, or suspensions or denials of driver's licenses or permits made pursuant to laws amended or repealed by this act, shall not be affected or abated by the provisions of this act.

Section 12 of Chapter 466, Laws, 1983, eff from and after July 1, 1983, provides as follows:

"SECTION 12. Prosecutions, convictions and penalties for violations which occurred prior to July 1, 1983, under laws amended by this act, and suspensions or denials of driver's licenses, permits or privileges made pursuant to laws amended by this act, shall not be affected or abated by the provisions of this act. In addition, convictions which occurred prior to July 1, 1983, under laws amended by this act shall be counted for the purposes of determining the penalties which shall be imposed on any person convicted for a second or subsequent offense under the provisions of the laws amended by this act."

§ 63-11-39. Admissibility of evidence in criminal action; reduction of driving while under influence charge prohibited.

(1) Upon the trial of any person charged with driving a vehicle under the influence of any substance other than intoxicating liquor which had im-

paired such person's ability to operate a motor vehicle, where such person refused to consent to a chemical test of his blood and where the law enforcement officer had reasonable grounds and probable cause to believe such person to be under the influence of a substance other than intoxicating liquor impairing his ability to operate a motor vehicle, the fact that such person refused consent to a chemical test of his blood shall be admissible in evidence and shall give rise to the presumption that had any such test been given it would have disclosed the presence of a substance other than intoxicating liquor in his body which impaired his ability to operate a motor vehicle.

(2) No provision of this chapter shall be construed as limiting the introduction of any other competent evidence bearing upon the question whether or not the person was under the influence of intoxicating liquor or any other substance which had impaired such person's ability to operate a motor vehicle.

(3) The court having jurisdiction or the prosecutor shall not reduce the charge of driving under the influence of intoxicating liquor to a lesser charge for any person whose blood is shown to contain ten one-hundredths percent (.10%) or more by weight volume of alcohol by a chemical analysis of the person's breath or blood.

SOURCES: Codes, 1942, § 8175-15; Laws, 1971, ch. 515, § 15; 1981, ch. 491, § 10; 1983, ch. 466, § 10, eff from and after July 1, 1983.

Editor's Note—

Section 15 of Chapter 491, Laws 1981, provides as follows:

SECTION 15. Prosecutions, convictions and penalties for violations which occurred prior to the effective date of this act under laws amended or repealed by this act, or suspensions or denials of driver's licenses or permits made pursuant to laws amended or repealed by this act, shall not be affected or abated by the provisions of this act.

Section 12 of Chapter 466, Laws, 1983, eff from and after July 1, 1983, provides as follows:

"SECTION 12. Prosecutions, convictions and penalties for violations which occurred prior to July 1, 1983, under laws amended by this act, and suspensions or denials of driver's licenses, permits or privileges made pursuant to laws amended by this act, shall not be affected or abated by the provisions of this act. In addition, convictions which occurred prior to July 1, 1983, under laws amended by this act shall be counted for the purposes of determining the penalties which shall be imposed on any person convicted for a second or subsequent offense under the provisions of the laws amended by this act."

Research and Practice References—

7A Am Jur 2d, Automobiles and Highway Traffic §§ 375-380, 384.

61A CJS, Motor Vehicles §§ 633(2), 633(4), 633(8).

2 Am Jur Proof of Facts 585, Blood Tests.

17 Am Jur Proof of Facts 2d 1, Defense to Charge of Driving Under Influence of Alcohol

Annotations—

Drunk driving: motorist's right to private sobriety test. 45 ALR4th 11.

JUDICIAL DECISIONS

In a prosecution for homicide by culpable negligence, results of a blood test revealed that the defendant had considerably more than .10 percent alcohol content in his blood,

the demarcation under § 63-11-39 between a presumption of whether he was driving under the influence of intoxicating liquor. *Williams v State* (1983, Miss) 434 So 2d 1340.

A chemical analysis of defendant's blood performed by an individual not possessing a valid permit issued by the State Board of Health for making such analysis (Code 1972 § 63-11-19) was nevertheless admissible as other competent evidence under Code 1972 § 63-11-39 where evidence detailed in opinion established that test was reasonable. *Cutchens v State* (1975, Miss) 310 So 2d 273, cert den 423 US 1061, 46 L Ed 2d 652, 96 S Ct 799.

§ 63-11-40. Driving while license or privilege is cancelled, suspended or revoked; penalties.

Any person whose driver's license, or driving privilege has been cancelled, suspended or revoked under the provisions of this chapter and who drives any motor vehicle upon the highways, streets or public roads of this state, while such license or privilege is cancelled, suspended or revoked, shall be guilty of a misdemeanor and upon conviction shall be punished by imprisonment for not less than forty-eight (48) hours nor more than six (6) months, and fined not less than two hundred dollars (\$200.00) nor more than five hundred dollars (\$500.00).

The commissioner of public safety shall suspend the driver's license or driving privilege of any person convicted under the provisions of this section for an additional six (6) months. Such suspension shall begin at the end of the original cancellation, suspension or revocation and run consecutively.

SOURCES: Laws, 1983, ch. 466, § 11, eff from and after July 1, 1983.

§ 63-11-41. Admissibility of non-submission to test in criminal action.

If a person under arrest refuses to submit to a chemical test under the provisions of this chapter, evidence of refusal shall be admissible in any criminal action under this chapter.

SOURCES: Codes, 1942, § 8175-22; Laws, 1971, ch. 515, § 22, eff from and after April 1, 1972.

Research and Practice References—

7A Am Jur 2d, Automobiles and Highway Traffic §§ 375-380.
61A CJS, Motor Vehicles §§ 633(2), 633(4).

§ 63-11-43. Admissibility of test results or of submission or non-submission to test in civil case.

Neither results of a chemical test under the provisions of this chapter, nor the fact of submission to or refusal of such test shall be admissible in a civil case.

SOURCES: Codes, 1942, § 8175-23; Laws, 1971, ch. 515, § 23, eff from and after April 1, 1972.

Annotations—

Drunk driving: motorist's right to private sobriety test. 45 ALR4th 11.

JUDICIAL DECISIONS

The privilege created by sections 63-11-7 and 63-11-43 to prevent the introduction into evidence of the results of blood alcohol tests taken pursuant to the provisions of the implied consent laws without the consent of the person tested are inconsistent with the Mississippi Rules of Evidence, Rules 501 and 1103, and therefore must yield. *Whitehurst v State*

(1989, Miss) 540 So 2d 1319.

Trial court erred in refusing to admit evidence that decedent's blood alcohol content, tested at request of investigating officer, was .15 percent, because statutory privilege in § 63-11-43 prohibiting admission, in civil trial, of blood alcohol tests taken pursuant to state's implied consent law, had been abrogated by adoption of Mississippi Rules of Evidence; officer who requested test did not have authority to do so, since implied consent law authorized blood alcohol test on dead or unconscious drivers whom investigating officer believed to have been operating motor vehicle while intoxicated, and there was no evidence that decedent had been operating motor vehicle; however, admission was proper because exclusion of this relevant evidence would have no deterrent effect on officer who or-

dered test, and would only penalize defendants. *Hughes v Tupelo Oil Co.* (1987, Miss) 510 So 2d 502.

Blood alcohol test results were admissible in civil case when performed on driver who died as result of accident, both because decedent's representative waived statutory protection and results of test were submitted in defense of person tested, Miss Code §§ 63-11-7 and 63-11-43 (1972) being intended to protect interests of person submitted to blood alcohol test. *Clark v Pascagoula* (1987, Miss) 507 So 2d 70.

Results of blood alcohol test are inadmissible in civil case even for impeachment purposes. *Adams v Green* (1985, Miss) 474 So 2d 577.

§ 63-11-45. Effect of test results or non-submission to test on insurance coverage.

No coverage otherwise afforded under any policy of insurance shall be denied on the ground that any person has refused any test provided for by this chapter nor on the basis of the results of any such test. Any provision to such effect in any insurance policy hereinafter issued shall be void.

SOURCES: Codes, 1942, § 8175-25; Laws, 1971, ch. 515, § 29, eff from and after April 1, 1972.

§ 63-11-47. Selection and purchase of equipment and supplies.

The commissioner of public safety, acting in concert with the state crime laboratory created pursuant to section 45-1-17, is hereby expressly authorized and directed to determine the equipment and supplies which are adequate and necessary from both a medical and law enforcement standpoint for administration of this chapter. The commissioner of public safety, upon receiving such recommendation from the state crime laboratory, shall recommend an equipment standard for such equipment to the state fiscal management board. The state fiscal management board, using such a uniform standard for said equipment, shall advertise its intention of purchasing said equipment by one (1) publication in at least one (1) newspaper having general circulation in the state of Mississippi at least ten (10) days before the purchase of such equipment and supplies, and the advertisement shall clearly and distinctly describe the articles to be purchased, and shall receive sealed bids thereon which shall be opened in public at a time and place to be specified in the advertisement.

The state fiscal management board shall accept the lowest and best bid for said equipment and supplies; in its discretion, it may reject any and all bids submitted. The lowest and best bid for said equipment and supplies accepted by the state fiscal management board shall be the state-approved price of said equipment for purchase by the state, county and city governments.

Title to all such testing equipment in the state purchased hereunder shall remain in the commissioner of public safety regardless of what entity pays the purchase price.

The state, counties and municipalities may purchase in the name of the commissioner of public safety such equipment and supplies from other vendors of said equipment and supplies necessary to implement this chapter, provided they purchase of the same quality and standard as certified to the state fiscal management board and approved by the department. However, such equipment and supplies shall not be purchased by the state, counties and municipalities unless it is at a price equivalent to or lower than that approved by the state fiscal management board, pursuant to the bid procedure as outlined herein.

SOURCES: Codes, 1942, § 8175-26; Laws, 1971, ch. 515, § 30; 1981, ch. 491, § 13; 1984, ch. 488, § 263, eff from and after July 1, 1984.

Editor's Note—

Section 27-104-1 provides that the term "Fiscal Management Board" shall mean the "Department of Finance and Administration".

Section 15 of Chapter 491, Laws 1981, provides as follows:

SECTION 15. Prosecutions, convictions and penalties for violations which occurred prior to the effective date of this act under laws amended or repealed by this act, or suspensions or denials of driver's licenses or permits made pursuant to laws amended or repealed by this act, shall not be affected or abated by the provisions of this act.

Section 341, ch. 488, Laws, 1984, provides as follows:

"Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action which accrued prior to the date on which the applicable sections of this act become effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which the applicable sections of this act become effective or shall thereafter be begun."

JUDICIAL DECISIONS

Duties and responsibilities, including allowing authority for Educational Television to contract (§ 37-63-11), giving concurrence for the use of funds to travel outside the continental United States (§ 25-3-41), advertising for and accepting bids on equipment for the State Crime Laboratory (§ 63-11-47), granting authority for the purchase of motor vehicles by state departments, institutions, or agencies

(§ 25-1-77), and approving dispersement of funds by the Mississippi Air and Water Pollution Commission (§ 49-17-13), are administrative functions within the prerogative of the executive department, and statutes vesting those powers and functions in members of the legislature violate Miss Const Art 1 § 2 and are unconstitutional. *Alexander v State* (1983, Miss) 441 So 2d 1329.

PLEASE PRINT INFORMATION

IN THE COURT DESIGNATED BELOW, THE AFFIANT HEREIN, BEING DULY SWORN, UPON OATH DOES DEPOSE AND SAY AT THE FOLLOWING LOCATION, TIME AND DATE.

| | | | | | | | |
|---|------|----------------|--------------|--------------|----------------|---------------|-------|
| | | | | AGENCY CODE | | TICKET NUMBER | |
| LOCATION | | | | | HIGHWAY/STREET | | |
| DAY | DATE | TIME OF ARREST | A.M. P.M. | TIME OF TEST | A.M. P.M. | | |
| NAME (FIRST NAME, MIDDLE NAME, LAST NAME) | | | | | | | |
| ADDRESS | | | | | | | |
| CITY | | | | STATE | ZIP CODE | | |
| DRIVER LICENSE NUMBER | | | | TYPE | STATE | SEX | RACE |
| VEHICLE LICENSE NO. | | | | STATE | YEAR | MAKE | MODEL |
| VEHICLE TYPE | | | | | | | |

MUNICIPAL COURT
 JUSTICE COURT

ADDRESS _____

CITY _____

| |
|-------|
| % BAC |
|-------|

**STATE OF MISSISSIPPI
 DEPARTMENT OF PUBLIC SAFETY
 Receipt for Driver License and Temporary Driving Permit
 .10% OR GREATER BAC**

This form is valid as a driver permit for a period of thirty (30) days from the date it was issued. Anyone using this form thirty (30) days after issuance may be driving under suspension. All law enforcement officers may determine if the holder is driving under suspension by contacting the nearest Mississippi Highway Safety Patrol or any Mississippi Justice Information Center terminal.

This receipt and permit is issued to individuals who have taken a breath test to determine Blood Alcohol Content and the results indicated a Blood Alcohol Content of .10% or greater. (Section 63-11-23 (2) Mississippi Code, 1972, Annotated.)

VIOLATOR'S SUSPENSION NOTICE

This form is valid as a driver permit for a period of thirty (30) days from the date of arrest. You have the right to request in writing to the court of original jurisdiction a trial before this permit expires. If the court denies your request for a trial within the thirty (30) day period and if the court provides an Order, the Commissioner of Public Safety will issue an additional thirty (30) day permit. No privilege to drive may be extended more than ninety (90) days from the date of the initial seizure of driver license.

If you do not request a trial before the expiration of this permit, your license will be suspended. The period of suspension is for ninety (90) days or in the event you have previously been convicted of driving under the influence (Section 63-11-30) your suspension period is for one (1) year. This suspension is in addition to any other suspension imposed upon conviction for driving under the influence.

Print Arresting Officer's Name: _____
 Signature of
 Arresting Officer: _____ Badge No. _____
 Enforcement Agency: _____

PRINT INFORMATION

IP-14 (9-85)

LAST NAME _____ FIRST _____ MIDDLE _____ DL/NO. _____ STATE _____

DATE OF BIRTH _____ DATE OF ARREST _____ CITY STATE AGENCY CODE _____

MO DAY YEAR MO DAY YEAR COUNTY FED. TICKET NO. _____

SEX _____ RACE _____ LOCATION OF ARREST _____ HWY _____ DISTRICT _____

CITY _____ COUNTY _____ TIME _____ AM PM

VIOLATOR'S ADDRESS _____ STREET OR ROUTE _____ CITY _____ STATE _____ ZIP _____

TRIAL JUDGE _____

ADDRESS _____

CITY _____

STATE OF MISSISSIPPI
 DEPARTMENT OF PUBLIC SAFETY
 Receipt for Driver License and Temporary Driving Permit
 BREATH TEST REFUSAL

Persons using this form as a driving permit forty-five (45) days after date of arrest, should have this license status checked through any Mississippi Highway Patrol Station or Mississippi Justice Information Center terminal to determine if subject is driving while license is suspended.

This permit is issued to individuals who have refused a breath test to determine Blood Alcohol Content as required in Section 63-11-5 and in accordance with Section 63-11-21 Mississippi Code, 1972, Annotated.

OFFICER'S STATEMENT

I, the undersigned law enforcement officer, state: (a) that the above named person was placed under arrest after a refusal to take a breath test to determine Blood Alcohol content; (b) that he refused to submit to the test upon request as provided in Section 63-11-5 of the Mississippi Code, 1972 Annotated; (c) that the person was informed that if he refused to take the test his license to drive would be suspended or denied for a period of ninety (90) days or for a period of one (1) year in the event of any previous conviction of such person under Section 63-11-30 Mississippi Code, 1972, Annotated; (d) that the law enforcement officer had reasonable grounds and probable cause to believe the person had been driving a motor vehicle upon the public highways of this state while under the influence of intoxicating liquor as indicated below:

- Slurred Speech
- Driving off roadway
- Other _____
- Smell of Intoxicating Beverage Present
- Weaving in Roadway
- Coordination impaired
- Eyes Dilated

Print Officer's Name: _____

Officer's Signature: _____ Badge No. _____

Enforcement Agency: _____

STAPLE DRIVER LICENSE HERE
 IS LICENSE ATTACHED

YES _____ NO _____

IF NO WHY _____

SWORN TO AND SUBSCRIBED BEFORE ME,
 this the _____ day of _____, 19_____.

Notary Public or court Clerk

WITHIN 24 HOURS MAIL TO:
 Statistical Branch
 Dept. D
 P. O. Box 958
 Jackson, Mississippi 39205