

Alcohol and Highway Safety Laws: A National Overview. 1981



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Contents

Executive Summary	1
I. Preliminary Breath Test (PBT)	3
Map 1: Preliminary Breath Test (PBT) Laws: Overview—October 31, 1981	4
Chart 1: Preliminary Breath Test Laws	5
II. Blood Alcohol Concentration (BAC) Tests: Statutory Authority	9
Chart 2: Blood Alcohol Concentration (BAC) Tests: Statutory Authority	12
III. BAC Tests After Traffic Accidents: Fatal and Nonfatal	19
Chart 3: BAC Tests Required After Traffic Accidents: Fatal and Nonfatal	20
IV. BAC Tests: Scope of Police Authority	28
Chart 4: BAC Tests: Scope of Police Authority	29
V. BAC Tests: Defendant's Options	34
Chart 5: BAC Tests: Defendant's Options	35
VI. BAC Levels as Evidence in State Courts	43
Map 2: Illegal <i>Per Se</i> and Presumptive BAC Laws: October 31, 1981	44
Chart 6: BAC Levels as Evidence in State Courts	45
VII. Driver Screening, Rehabilitation, and Sanctions	49
Chart 7: Driver Screening, Rehabilitation, and Sanctions	51
VIII. Legal Age for Consumption of Beer, Wine, and Distilled Spirits	75
Chart 8: Legal Age for Consumption of Beer, Wine, and Distilled Spirits	76

The information contained in this report reflects statutory material available up to October 31, 1981.

Understanding the Charts

While the charts contained in this overview generally are self-explanatory, certain symbols require further explanation.

- Yes, expressly by statute.
- No, not expressly provided by statute (or on charts 3 and 7 not mandatory).
- ◐ Unclear.
- ⊗ Probably implied.

Executive Summary

Alcohol and Highway Safety Laws: A National Overview

The problems associated with alcohol and highway safety laws can be measured statistically in terms of the number of traffic deaths per day across the nation, or financially in terms of the billions of dollars in lost income from death and disability at the hands of drunken drivers. These problems can also be measured in terms of how different States' laws address the pressing problems of detecting, apprehending, convicting, and rehabilitating intoxicated drivers. This study attempts to provide an overview of the Nation's alcohol and safety laws. Very briefly, the charts and the maps proceed as follows:

Map 1. States With Preliminary Breath Test Law

To introduce the columnar display of chart 1, the map identifies the 16 jurisdictions which have adopted some form of a preliminary breath test (PBT) law.

Chart 1. Preliminary Breath Test (PBT) Laws

This chart illustrates the first step in the sequence from arrest and screening to conviction and rehabilitation. PBT's are administered at the site of a traffic stop for screening purposes, as compared with implied consent blood, breath, or urine tests, which are administered after arrest as a means of obtaining admissible evidence of intoxication. The chart examines those States that authorize prelimi-

nary breath tests, the penalties provided for refusal to take the test, and whether the test results are admissible in evidence.

Chart 2. Blood Alcohol Concentration (BAC) Test: Statutory Authority

Charts 2, 3, 4, and 5 illustrate the various State approaches and procedures with regard to implied consent BAC tests. Chart 2 examines the legal authority for blood alcohol concentration (BAC) tests. Most States permit breath testing under an implied consent theory only after a valid arrest, and their statutes merely clarify the right and obligation of the arresting officer or testing personnel to administer such a test after a suspect is lawfully placed under custody. However, at least six States have amended their laws to eliminate the prerequisite of arrest and to authorize administration of a BAC test either when the officer has reasonable grounds to believe the driver is under the influence (New Jersey, Pennsylvania, Tennessee, and Utah), or has detained the driver on suspicion of driving under the influence (Maryland). In Maine, actual administration of the test must be preceded by arrest or a summons, but a driver is deemed to have given consent if there is "probable cause to believe" the driver has operated or attempted to operate a motor vehicle while under the influence. This language appears

to offer more latitude to the officer than do those statutes which imply consent only after an outright arrest.

Chart 3. BAC Tests Required After Traffic Accidents

This chart identifies those States that by law mandate the administration of BAC tests after traffic accidents. The primary purpose of these laws is to authorize the gathering of statistical data on all accidents to determine to what extent alcohol is truly involved in traffic injuries and deaths. As a result, the statutes sometimes leave open the question of the admissibility of the test results in criminal or civil proceedings. Only 10 States clearly require testing after both fatal and nonfatal accidents. Older laws of this type were somewhat permissive in nature. They might permit or even require the coroner to investigate deaths, but they did not necessarily require a BAC test in all cases involving traffic accidents. Usually the coroner would administer a BAC test when the traffic report indicated that the death was "alcohol related." Even though these laws do not expressly require BAC tests after traffic accidents, they have been included on chart 3 for comparative purposes and because a law mandating "an investigation" could reasonably be interpreted as requiring BAC tests when appropriate following a traffic accident.

Chart 4. BAC Tests: Scope of Police Authority

Tests involving the withdrawal of the blood are usually statutorily permissible only when conducted by trained medical personnel. However, in many States, the police officer is granted the authority to conduct breath tests and, in some instances, urine tests. The statutory language in many States also authorizes tests of saliva or other bodily substances, although breath and urine are the primary test substances noted in this chart.

Chart 5. BAC Tests: Defendants' Options

Chart 5 illustrates defendant options in BAC testing procedures. Whether a defendant is allowed to select a particular BAC test—and the converse issue of the officer's prerogative to prescribe such tests—can become critical issues in civil or criminal actions, especially if a particular type of test has been refused. As chart 5 illustrates, less than 20 States expressly authorize the defendant to select the type of test (s)he will undergo.

Most States have also authorized supplemental tests, at the accused's option, which can afford a mistakenly accused or tested individual the right to challenge and supplement his test results in a timely fashion. The statutes usually do not address the practical difficulties of providing transportation or timely access to alternate testing equipment or hospital facilities.

Map 2. Illegal Per Se and Presumptive BAC Laws

The second map depicts how each State has regulated the evidentiary use which may be made of blood alcohol concentration (BAC) tests in court. Twenty States provide that a driver shall be deemed guilty (*illegal per se*) where a specific BAC level is exceeded (generally 0.10 percent). Other States presume that a driver was under the influence if the BAC level is 0.10 percent or more, but permit rebuttal of that presumption. Connecticut, Florida, Illinois, Iowa, Maine, Missouri, New York, South Dakota, Utah, Vermont, and Washington

have both illegal *per se* and presumptive evidence laws and are so duly noted on map 2. Variations in the BAC (percentage) levels which trigger application of the illegal *per se* or presumptive BAC laws are also noted on the map.

Chart 6. BAC Levels as Evidence in State Courts

This chart, like map 2, illustrates the fundamentally different approaches taken by the States in assigning evidentiary weight to BAC test results presented in court. A majority of jurisdictions consider a BAC level exceeding 0.10 percent of blood alcohol concentration as establishing a "presumption" or "*prima facie* evidence" of intoxication. A few States vary the percentage level used in this formula (see the comment line). In either case, the defendant is given an opportunity to rebut this evidence, although the burden of proof shifts to the defendant to prove his innocence.

The remaining States use a qualitatively different formula which eliminates the defendant's right of rebuttal. In these States, if the specified BAC level is exceeded (generally 0.10 percent), the driver "shall be deemed guilty." Exceeding that BAC level ceases to be mere "evidence of intoxication," but rather becomes a crime in and of itself. Thus, these provisions have been termed "*illegal per se*" laws.

Chart 7. Driver Screening, Rehabilitation, and Sanctions

Chart 7 focuses on the administrative and judicial procedures available to deal with defendants accused or convicted of driving under the influence. Several States have developed pretrial screening procedures which permit the early identification and rehabilitation of drivers who have alcoholism or drug abuse problems. Similarly, a number of States have established a presentence reporting procedure for DUI defendants whereby the judge or hearing officer is required to consider an individual's previous alcoholic, drug abuse, or DUI history before final sentencing.

Mandatory imprisonment for repeat offenders convicted of driving under the influence is a feature of

many DUI penalty laws. However, only laws which require rather than authorize a sentence of imprisonment or a fine are treated as mandatory in chart 7. A majority of the States have created a limited license to be issued to individuals convicted of DUI. Typically these limited licenses permit the license holder to drive only while working or while on the way to and from work or to and from a driving improvement course. This chart also identifies those States that have postconviction driver retraining or rehabilitation programs for problem drinkers or drug users.

Chart 8. Legal Age for Consumption of Beer, Wine, and Distilled Spirits

Chart 8 depicts the legal ages for consumption of beer, wine, and distilled spirits. Less than half of the jurisdictions studied set the drinking age at 18, while over half of the remaining States established 21 as the minimum drinking age.

During the period 1980 to 1981, nine States—Florida, Georgia, Illinois, Nebraska, New Jersey, Rhode Island, Texas, Virginia, and West Virginia—raised the legal drinking age by at least one year. These changes seem to indicate a national, or at least regional, trend toward reducing teenagers' access to alcohol.

A somewhat longer discussion of the major issues addressed by the courts and legislatures precedes each of the major alcohol and highway safety topics summarized in charts 1 through 8.

This publication was created to provide the reader with information on how the States regulate alcohol and highway safety problems and how alcohol and highway safety legislation is enforced. It is hoped that this initial overview will be received by the States in a spirit of cooperation and that they will contribute to the validation of the overview by commenting on its accuracy and usefulness. Comments should be sent to the following address: U.S. Department of Transportation, National Highway Traffic Safety Administration, Traffic Safety Programs NTS-15, Washington, DC 20509.

Preliminary Breath Test (PBT)

Map 1 and chart 1 depict the States which have enacted laws governing the preliminary breath test (PBT). Preliminary breath test laws should be distinguished from the statutory provisions, referred to as "implied consent laws," which usually require arrest as a condition precedent to the administration of a breath test. The preliminary breath test may be given in most jurisdictions to any driver reasonably suspected of driving under the influence of alcohol (DUI) and so offers a number of advantages to States which permit its use. The procedure allows a law enforcement officer to administer a screening test before putting the person under arrest for DUI. This enables the police officer to avoid relying primarily on a psychomotor test to make a DUI arrest. The PBT provides an easy and prompt alternative to an in-custody implied con-

sent blood alcohol content (BAC) test or tests. If the preliminary breath test has established a person's innocence, that person can proceed on his or her business without further delay. The State of Florida, for example, permits a driver to request such a test, so as to avoid the detailed and time consuming implied consent test process.

The preliminary breath test generally is administered at the discretion of the police officer and usually on the spot. In Maine and New York, for example, such tests, although not required, are permitted for every person involved in a vehicle accident for purposes of determining whether the person was driving the vehicle while under the influence of alcohol. Florida, Indiana, Maryland, Minnesota, Mississippi, Nebraska, North Carolina, North Dakota, South Dakota, Ver-

mont, Virginia, West Virginia, Wisconsin, and Puerto Rico have statutory provisions providing for PBT's. Maryland and West Virginia have recently authorized preliminary breath testing in addition to the implied consent BAC testing.

In each State the PBT continues to be used primarily as a preliminary screening test to determine the need for subjecting a person to arrest and additional tests. In Minnesota and Maine refusal to submit to a PBT is grounds for an implied consent test. The refusal to take the implied consent test can result in license suspension. In Nebraska a refusal to take a PBT, in and of itself, constitutes a misdemeanor punishable by a fine. However, a PBT is not generally admissible as evidence of the ultimate fact of intoxication at trial. An implied consent test must be taken for evidentiary purposes.

MAP 1 / Preliminary Breath Test (PBT) Laws: Overview—October 31, 1981

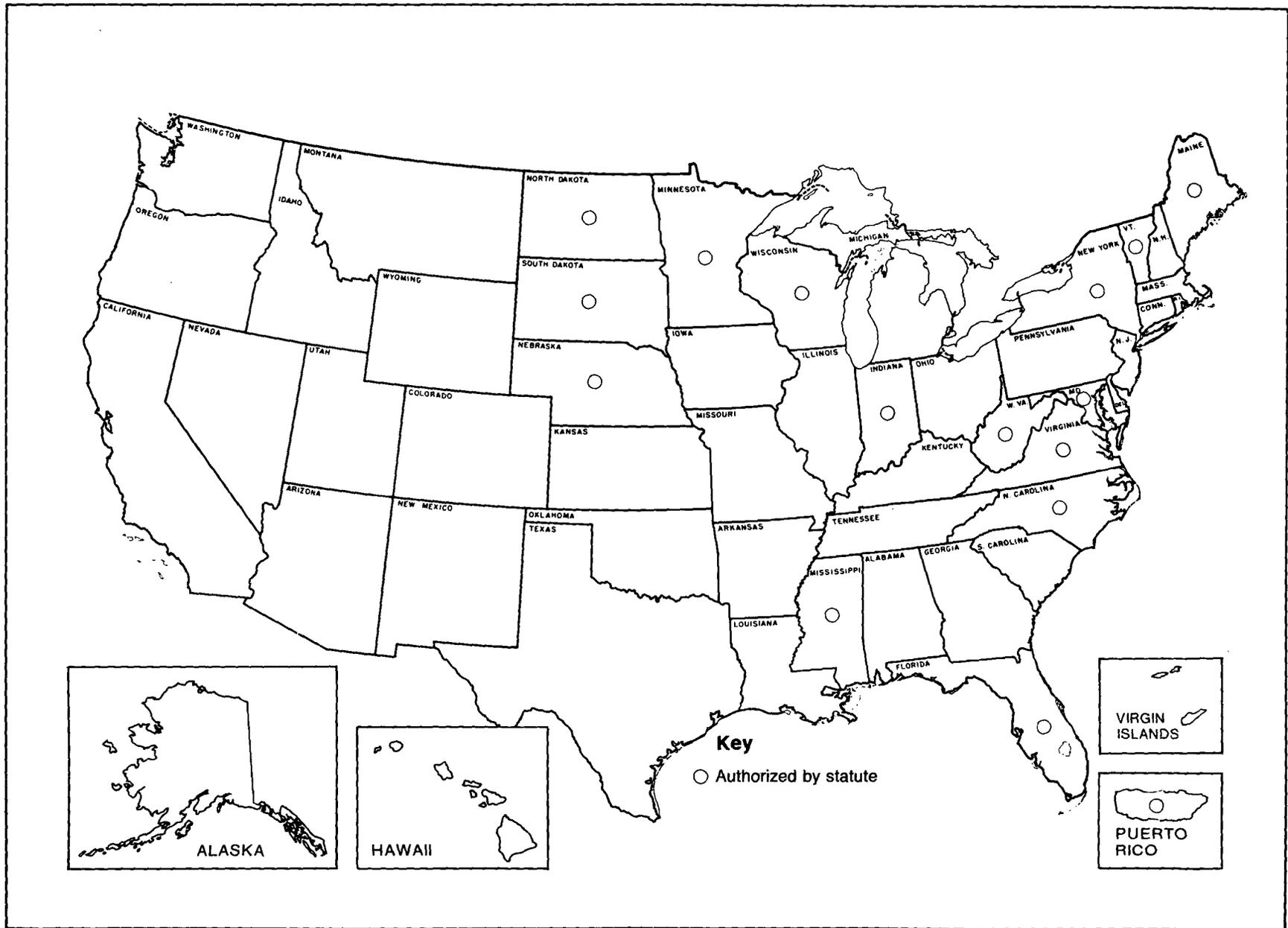


CHART 1 / Preliminary Breath Test Laws

State	PBT	Suspension or Revocation for Refusal	Authority for Admission in Judicial Proceedings	Citation/Comment
Alabama				
Alaska				
Arizona				
Arkansas				
California				
Colorado				
Connecticut				
Delaware				
Florida	O ¹		● ²	¹ Fla. Stat. Ann. §322.261(1)(b)(1). Driver may demand PBT or officer may request and give test with driver's consent. ² §322.261(1)(b)(1). Result of prearrest breath test "shall not be admissible into evidence in any civil or criminal proceeding."
Georgia				
Hawaii				
Idaho				
Illinois				
Indiana	● ¹			¹ Ind. Stat. Ann. §9-4-4.5-3 suggests the existence of PBT's in Indiana, but these chemical tests are more akin to a BAC, even though given prior to arrest.
Iowa				
Kansas				
Kentucky				
Louisiana				
Maine	O ¹	O ²	O ³	¹ Me. Rev. Stat. Ann. tit. 29, §§1312(11C) and 1312(6) (Ch. 458, Laws 1981). ² Police may require suspect to submit to breath test and, if test is positive or (presumably) if driver refuses test, may require submission to chemical tests under implied consent law. Refusal to submit to chemical tests results in suspension of license. Tit. 29, §1312(1)&(11). ³ Results of "self-contained BAC test" are <i>prima facie</i> evidence of blood alcohol level in any court. Tit. 29, §1312(6) (Ch. 458, Laws 1981).

CHART 1 / Preliminary Breath Test Laws —Continued

State	PBT	Suspension or Revocation for Refusal	Authority for Admission in Judicial Proceedings	Citation/Comment
Maryland	O ¹	● ¹	O ²	¹ Md. Transp. Code Ann. §16-205.2. Neither refusal nor taking the PBT shall prevent or require a BAC test pursuant to §16-205.1. ² Results of a PBT are admissible by a defendant, not by the State.
Massachusetts				
Michigan				
Minnesota	O ¹	O ²	● ³	¹ Minn. Stat. Ann. §169.121(6). ² PBT used only as a guide to officer's decision to arrest and require BAC tests. Driver can refuse without arrest or revocation of license if he submits to blood, breath, or urine test. ³ Not admissible in court action except to prove that later a chemical test was properly required of a person pursuant to §169.123(2).
Mississippi	O ¹			¹ Miss. Code Ann. §63-11-5. PBT is unofficial "on the spot" test to establish if "driver is free from any alcoholic content" before the official chemical test is administered. An official test requires an arrest.
Missouri				
Montana				
Nebraska	O ¹	● ²		¹ Neb. Rev. Stat. §39-669.08(3). ² Refusal to submit to PBT or a finding of 0.10% alcohol content as the result of a PBT is ground for arrest. However, offering of a PBT is not a condition precedent to an arrest under §39.669.08. <i>State v. Orosco</i> , 199 Neb. 532, 260 N.W. 2d 303 (1977).
Nevada				
New Hampshire				
New Jersey				
New Mexico				
New York	O ¹			¹ N.Y. Veh. & Traf. Law §1193a. Only drivers involved in accidents are given a PBT, to determine the need for BAC tests.
North Carolina	O ¹	● ²	● ²	¹ N.C. Gen. Stat. §20-16.3. ² N.C. Gen. Stat. §20-16.3. Statute specifies that the result of the test "shall not be admissible" in evidence and failure to submit is not a violation.

CHART 1 / Preliminary Breath Test Laws — Continued

State	PBT	Suspension or Revocation for Refusal	Authority for Admission in Judicial Proceedings	Citation/Comment
North Dakota	O ¹	O ²	● ³	<p>¹N.D. Cent. Code §39-20-14.</p> <p>²Refusal to submit to PBT will result in revocation or suspension of driving license. Hearing and judicial review are provided for.</p> <p>³Results of the test or tests are used only for determining whether to administer a BAC test, as provided under §39-20-01.</p>
Ohio				
Oklahoma				
Oregon				
Pennsylvania				
Rhode Island				
South Carolina				
South Dakota	O ¹	● ²	● ²	<p>¹S.D. Code §32-23-1.2.</p> <p>²Purpose of PBT is to determine need for further chemical testing. No provision regarding refusal to submit or admissibility into evidence.</p>
Tennessee				
Texas				
Utah				
Vermont	O ¹		O ²	<p>¹Vt. Stat. Ann. tit. 23, §1202(b) authorizes the law enforcement officer to administer a PBT one or more times in order to determine whether further and more accurate BAC tests are required.</p> <p>²PBT result is not introduced as evidence. Id.</p>
Virginia	O ¹		● ²	<p>¹Va. Code Ann. §18.2-267(a).</p> <p>²PBT results are not admissible in a judicial proceeding. §18.2-267(e).</p>
Washington				
West Virginia	O ¹		● ¹	<p>¹W.Va. Code Ann. §17C-5-5. The results of the PBT may only be used in guiding the officer as to whether a BAC should be taken.</p>
Wisconsin	O ¹	O ²	● ³	<p>¹Wis. Stat. Ann. §343.305(2)(a). The police officer may request that a driver, prior to arrest or to issuance of citation, take the PBT.</p> <p>²The person may refuse a PBT without any penalty provided he agrees to take the regular BAC tests. Id.</p> <p>³Expressly declared inadmissible under §343.305(2)(a).</p>

CHART 1 / Preliminary Breath Test Laws—Continued

State	PBT	Suspension or Revocation for Refusal	Authority for Admission in Judicial Proceedings	Citation/Comment
Wyoming				
Washington, D.C.				
Puerto Rico	O ¹			¹ P.R. Laws Ann. tit. 9, §1043(a) refers to an "initial breath test" to be performed in addition to BAC tests of blood, breath, or urine. Also see tit. 9, §1043(c)(2). The "initial breath test" is used to see if a chemical test is necessary.
Virgin Islands				



Blood Alcohol Concentration (BAC) Tests: Statutory Authority

Chemical tests to determine blood alcohol content (BAC) are the fundamental tools for enforcing State laws relating to driving while under the influence of alcohol (DUI). Implied consent laws remain the legal basis for such tests.¹ In 1953 New York was the first State to adopt an implied consent law authorizing chemical tests for intoxication. In 1971 Illinois became the 50th State to adopt such a provision. Presently, the District of Columbia, Puerto Rico, Virgin Islands, and all States have implied consent laws which govern the administration of BAC tests. The State of Maryland changed its somewhat anomalous system in 1981. Prior to that year,

the statutory authority for subjecting nonresidents and unlicensed drivers to BAC tests rested on the usual implied consent law, while the authority for subjecting a Maryland resident-licensee to such tests was based on the express consent that the resident driver was required to give as precondition of receiving a Maryland license to drive or operate a vehicle. Today Maryland bases its authority to administer BAC tests on the implied consent law, regardless of residence of the licensee or status of the license.

Although there are many variations in language among State implied consent laws, the basic organizational structure and content of the laws indicate widespread reliance on a model law. These laws almost uniformly provide that:

1. Any person who operates a motor vehicle upon a public highway is deemed to have given consent to a chemical test or tests of his or her blood, breath, or urine for the purpose of determining the blood alcoholic content.
2. Number one usually applies only if the person is arrested for any offense arising out of acts alleged to have been committed while driving or in actual physi-

cal control of a motor vehicle while under the influence of intoxicating liquor.

3. The test or tests shall be administered by a law enforcement officer having reasonable grounds to believe the person to be under the influence of intoxicating liquor while driving or in actual physical control of a motor vehicle.
4. If the arrested person refuses to submit to the chemical test when requested by a law enforcement officer, none shall be given.
5. Upon a refusal, the officer is to send a sworn report to the motor vehicle department stating that the officer had probable cause to believe the person under the influence and that the person refused to submit to a chemical test.
6. The motor vehicle department shall then revoke the person's license.
7. The department then notifies the person, and affords him or her an opportunity for a hearing on the issues of:
 - a. Whether the law enforcement officer had probable cause to believe the person had been driving or was in actual physical control of a motor vehicle upon a public highway,

¹Refusal to take the test may result in license suspension or revocation. Prior to the Mackey case [*Mackey v. Montrym*, 99 S. Ct. 2612 (1977)], a summary revocation of the driver's license generally has been held unconstitutional under the due process clause since the effect of such summary revocation becomes not one of removing drunks from the road but, rather, to remove only those who have refused to submit to the test. *Chavez v. Campbell*, 397 F. Supp. 1285 (D. Ariz. 1973). In the *Mackey* case involving the Massachusetts implied consent law, the Supreme Court of the United States upheld mandatory suspension of a driver's license because of the licensee's refusal to take a breathalyzer test upon arrest for DUI. *Mackey, supra*.

- b. Whether the person was placed under arrest, and
 - c. Whether the person had refused to submit to the chemical test.
8. If the revocation is sustained after the hearing, the person shall have the right to file an appeal in a court of law.²

The main purpose of implied consent statutes is to facilitate the prosecution of cases involving driving under the influence of alcohol. They do so by providing dependable evidence. A chemical test is a scientific determination of intoxication, in contrast to less reliable psychomotor tests or the opinions of witnesses. However, implied consent laws are not considered criminal in nature, and therefore may be construed rather broadly. For example, even if the law states that arrest must precede administration of a BAC test, some courts have interpreted the word broadly to include mere detaining of the driver, telling an ambulance attendant that a comatose driver will be charged with drunk driving, etc. In addition to their broad construction, these laws differ from criminal statutes in that they are excluded from the strictures of Miranda warnings. Nor does the Sixth Amendment right to counsel apply in most States. Since the constitutional right to counsel attaches only in criminal prosecutions, most courts have held that a driver cannot insist on a court-appointed counsel before deciding whether to take the test.³

Implied consent for chemical tests is, in practice, almost invariably invoked incidental to an arrest. However, a growing number of States (such as Maine, Maryland, New Jersey, Pennsylvania, Tennessee, and Utah) are loosening restrictions on BAC testing

²See Uniform Vehicle Code Section 6-205.1.

³The right to refuse to take the BAC test is only to protect a person from being physically forced to submit to the test. Since there is no right that can be knowingly waived which would require the assistance of counsel, denial of counsel regarding BAC tests does not violate the 6th Amendment. *Davis v. State*, 59 Ind. App. 244, 367 N.E. 2d 1163 (Ind. App. 1977).

prior to arrest if the police officer has reasonable cause to believe that the driver was under the influence. State laws sometimes base this consent upon the mere fact of driving on public highways.⁴ Prior to these recent statutory changes, courts had consistently claimed that the authority to subject a defendant to chemical tests of breath, blood, urine, saliva, or other bodily substance for the purpose of determining blood alcohol content had its basis in the defendant being placed under arrest—however broadly the concept of arrest was defined. However, where necessity requires immediate testing (to prevent destruction of evidence) and when facts established probable cause to make an arrest, the courts would occasionally approve testing prior to arrest and without permission.⁵ Now that the legislatures of several States have relaxed the statutory prerequisite of arrest, courts should have an easier time validating BAC tests.

Because the implied consent laws offer the defendant so few constitutional protections as compared with criminal laws, police are generally required to comply with every procedural detail in the implied consent statute, and the courts have rarely construed an im-

⁴Although driving is an essential element of the offense of DUI, driving is rather broadly interpreted. *People v. Olson*, 60 Ill. App. 3d 535, 377 N.E. 2d 371 (Ill. App. 1978). Application of such statutes, however, are not limited to DUI, rather, they apply to all criminal charges arising from an accused's **operation** of a motor vehicle, including charges of involuntary manslaughter as a result of automobile accident. *People v. Laffer*, 33 Ill. App. 3d 700, 338 N.E. 2d 480 (Ill. App. 1975). In Indiana, for example, a defendant found asleep behind the steering wheel with a blood-alcohol level of 0.14%, and the automobile standing on a public highway with the engine running and the lights on, was convicted of operating a vehicle while under the influence of intoxicating liquor. *Rose v. State*, 345 N.E. 2d 257 (Ind. 1976); see also, *Gallagher v. C'wealth*, 205 Va. 666, 139 S.E. 2d 37 (1964) (person arrested for DUI while sitting at the wheel of his car which was stuck in a ditch with the motor running and the rear wheels spinning).

⁵*State v. Proulx*, 252 N.W. 2d 426 (Iowa 1977).

plied consent law as permitting use of test results in evidence when such use is not expressly authorized by statute.⁶ Furthermore, implied consent statutes in most States permit the driver to refuse to take the test. Anyone refusing may suffer the consequences of license suspension or revocation, but they still have the right to refuse the test.

As a rule, an implied consent law applies only when the driver is suspected of or arrested for the misdemeanor offense of driving under the influence of intoxicating liquor. The driver charged with the felony of causing injury while driving under the influence of intoxicating liquor is likely to be subject to other laws which preclude the driver from claiming any statutory right to refuse to take a breathalyzer test.⁷ (See chart 3).

The issue of implied consent of the dead, unconscious, or incompetent driver arises frequently. Most States specifically provide that implied consent to a BAC test is presumed not to have been revoked by a driver who is incapable, unconscious, or dead. Put another way, the driver is deemed not to have refused to take the test. At least one State, Wyoming, permits the driver to revoke such consent after regaining consciousness.

Most States provide for more than one mode of chemical test. The tests which have received the widest legislative acceptance are breath, urine, and blood. A few States—Indiana, Missouri, and Oregon, for example—provide for a broader range of tests including tests of saliva or other bodily substance. While chemical tests based on breath, urine, and saliva samples can be conducted without elaborate procedural requirements, blood tests present an exceptional case. Because of the special nature of the process, courts generally regard withdrawal of blood from a defendant as falling within the realm of activities restricted by the Fourth Amendment prohibition against unreasonable searches and

⁶*People v. Kokesh*, 175 Colo. 206, 489 P.2d 429 (1971); *People v. Sanchez*, 173 Colo. 188, 476 P.2d 980 (1970).

⁷*People v. Sanchez, supra*.

seizures. Although the Fourth Amendment of the United States Constitution is not construed as an outright bar against the compulsory seizure of a person's blood without a warrant [*Schmerber v. California*, 384 U.S. 757 (1966)], it does require careful adherence to procedural limitations. The taking of the sample must be "done in a medically approved manner," incidental to a lawful arrest, and must be based upon the reasonable be-

lief that the person is intoxicated.⁸

Charts 2, 3, 4, and 5 illustrate State approaches to and procedures for conducting BAC testing, most of which are enunciated in each State's implied consent law. It is important to note that many State laws referred to in the above charts either fail to address one or more of

⁸*People v. Superior Court of Kern County*, 100 Cal. Rptr. 281, 493 P.2d 1145 (1972).

the issues highlighted on the charts or create some ambiguity in interpretation. The charts even reveal judicial opinions which seem to be incompatible with the letter or the spirit of State BAC-related laws. Because so many ambiguities arise in this area of the law, these charts tend to rely more heavily on the symbol used to denote uncertainty in the law and to explain the nature of the ambiguities in the comment column.

CHART 2 / Blood Alcohol Concentration (BAC) Tests: Statutory Authority

State	Implied Consent With Arrest	Implied Consent Without Arrest	Implied Consent of Dead, Unconscious, or Incompetent Persons	Citation/Comment
Alabama	O ¹		O ²	¹ Ala. Code §32-5-192(a). ² §32-5-192(b).
Alaska	O ¹			¹ Alaska Stat. Ann. §28.35.031. <i>Anchorage v. Geber</i> , 592 P. 2d 1187 (Alaska, 1979). See comment chart 3.
Arizona	O ¹		O ¹	¹ Ariz. Rev. Stat. Ann. §28-691.
Arkansas	O ¹		O ²	¹ Ark. Stat. Ann. §75-1045(a). ² §75-1045(b).
California	O ¹		O ¹	¹ Cal. Vehicle Code §13353(a). Although evidence of breathalyzer or other chemical test is not a necessary element of prosecution for drunk driving, test ampules must not be intentionally destroyed by law enforcement officials, and must be made available to defendant if they constitute "material" evidence. <i>People v. Hitch</i> , 117 Cal. Rptr. 9, 527 P. 2d 361 (1974).
Colorado	O ¹	O ²	O ³	¹ Colo. Rev. Stat. Ann. §42-4-1202(3)(a). ² Id. Only implied for urine and breath analyzer tests — <i>People v. Kokesh</i> , 175 Colo. 206, 486 P. 2d 429 (1971) and <i>People v. Sanchez</i> , 173 Colo. 188, 476 P. 2d 980 (1970). However, there must be probable cause to make such arrest and necessity of immediate test. ³ §42-4-1202(3)(d).
Connecticut	O ¹		O ²	¹ Conn. Gen. Stat. Ann. §14-227b. ² §§14-227b and 14-227c.
Delaware	O ¹		O ²	¹ Del. Code Ann. tit. 21, §2740. ² Tit. 21, §2747. An unconscious defendant incapable of refusing to submit to a blood test is not permitted to withdraw his implied consent upon reacquiring the full exercise of his faculties. <i>Morrow v. State</i> , 303 A. 2d 633 (Del. 1973).
Florida	O ¹		O ²	¹ Fla. Stat. Ann. §322.261(1)(a). Detention for a non-criminal traffic infraction or for allegedly driving under the influence of alcohol, based on probable cause, is sufficient lawful arrest to satisfy the statutory requirement for BAC test purposes. Op. Atty. Gen., 076-23, Jan. 29, 1976. ² §322.261(1)(c).
Georgia	O ¹		O ²	¹ Ga. Code Ann. §68B-306. ² §68B-206(b); §21-227 also authorizes blood test of unconscious and dead persons.

CHART 2 / Blood Alcohol Concentration (BAC) Tests: Statutory Authority —Continued

State	Implied Consent With Arrest	Implied Consent Without Arrest	Implied Consent of Dead, Unconscious, or Incompetent Persons	Citation/Comment
Hawaii	O ¹		O ²	¹ Hawaii Rev. Stat. §286-151. ² §286-154. Only blood test is given. Despite holding in <i>Schmerber v. California</i> , 384 U.S. 757, that there is no constitutional impediment to forcible removal by State of blood sample from persons arrested for DWI, forcible removal of blood by officials is tantamount to battery and driver can recover damages (in civil suits). <i>Rossell v. City of Honolulu</i> , 579 P. 2d 633 (Haw. 1978).
Idaho	O ¹		● ²	¹ Idaho Code Ann. §49-352. ² While dead persons are covered under §49-1016, consent of unconscious and incompetents is not specifically provided for.
Illinois	O ¹		O ¹	¹ Ill. Ann. Stat. ch. 95 1/2, §11-501.1.
Indiana	O ¹	O ²	O ³	¹ Ind. Code Ann. §9-4-4.5-1. ² Arrest deemed not essential for test. Implied consent deemed to exist on the very fact of driving, operating, or in actual physical control of a vehicle. Thus, tests need not be incidental to arrest. §9-4-4.5-3. <i>Clark v. State</i> , 372 N.E. 2d 185 (Ind. 1978). ³ §9-6-7-4 requires collection of specimen only from dead drivers and pedestrians 15 years of age or older who die within 4 hours of an accident.
Iowa	O ¹		O ²	¹ Iowa Code. Ann. §321B.3. ² §321B.5. A licensed physician must attest to such death, unconsciousness, or incapacity to consent to or refuse the chemical test (conditions deemed obviating the requirement of arrest and advice under §321B.6).
Kansas	O ¹		● ²	¹ Kan. Stat. Ann. §8-1001. ² BAC test results based on blood samples taken from a semiconscious person were held inadmissible as unreasonable search and seizure. <i>State v. Gordon</i> , 549 P. 2d 886 (Kan. 1976).
Kentucky	O ¹		O ²	¹ Ky. Rev. Stat. Ann. §186.565(1). ² §186.565(2).
Louisiana	O ¹		O ^{1,2}	¹ La. Rev. Stat. Ann. §32:661(A). Test results were permissible and admissible when sample taken from unconscious man pursuant to implied consent law, even though defendant would have refused consent if conscious. <i>State v. Graham</i> , 278 So. 2d 78 (Sup. 1973). "Pursuant to arrest" as used in §32:661 is broadly defined to include situation where officer tells ambulance driver he was charging unconscious

CHART 2 / Blood Alcohol Concentration (BAC) Tests: Statutory Authority—Continued

State	Implied Consent With Arrest	Implied Consent Without Arrest	Implied Consent of Dead, Unconscious, or Incompetent Persons	Citation/Comment
Louisiana (continued)				person with DWI. <i>State v. Sherer</i> , 354 So. 2d 1038 (Sup. 1978). ² §32:661(B).
Maine	O ¹	O ¹		¹ Me. Rev. Stat. Ann. tit. 29, §1312, as amended by Chs. 475 and 468 (Laws 1981). Driver is deemed to have given consent if there is probable cause to believe he has operated or attempted to operate a motor vehicle while under the influence. But, before the test is given, the driver must be arrested or summoned. Tit. 29, §1312(1).
Maryland	O ¹	O ²		¹ Md. Transp. Code Ann. §16-205.1, as amended by Ch. 244 (Laws 1981), extends coverage of the implied consent law to all drivers. ² The implied consent law applies if a person is "detained on suspicion of driving or attempting to drive while intoxicated or while under the influence of alcohol."
Massachusetts	O ¹		● ²	¹ Mass. Gen. Laws Ann. ch. 90, §24(f). ² Mass. Gen. Laws Ann. ch. 38, §6A requires medical examiners to submit to the State police laboratory for BAC tests blood samples of drivers, or of pedestrians 16 years of age or older, who die of injuries received in automobile accidents within 4 hours of the accident.
Michigan	O ¹			¹ Mich. Stat. Ann. §9.2325(3).
Minnesota	O ¹	● ²		¹ Minn. Stat. Ann. §169.123(2). ² If the person is involved in an accident resulting in property damage, personal injury, or death. §169.123(2). BAC tests may also be conducted if PBT is refused or if the PBT shows BAC of 0.10% or more.
Mississippi	O ¹		O ²	¹ Miss. Code Ann. §63-11-5. ² §63-11-7.
Missouri	O ¹			¹ Mo. Rev. Stat. §577.020(1).
Montana	O ¹	● ²	O ²	¹ Mont. Code Ann. §61-8-402(1). ² An arrest is not necessary if motorist is unconscious or is in a condition rendering him/her incapable of refusal. <i>State v. Mangels</i> , 531 P. 2d 1313 (1975).
Nebraska	O ¹		O ²	¹ Neb. Rev. Stat. §39-669.08. ² §39-669.10.
Nevada	O ¹		O ²	¹ Nev. Rev. Stat. §484.383(1). ² §484.383(3).

CHART 2 / Blood Alcohol Concentration (BAC) Tests: Statutory Authority — Continued

State	Implied Consent With Arrest	Implied Consent Without Arrest	Implied Consent of Dead, Unconscious, or Incompetent Persons	Citation/Comment
New Hampshire	O ¹		O ²	¹ N.H. Rev. Stat. Ann. §262-A:69-a [recodified effective 1/82 as §265:84 (Ch. 146, Laws 1981)]. ² §262-A:69-d [recodified effective 1/82 as §265:91, (Ch. 146, Laws 1981)].
New Jersey	O ¹	O ²		¹ N.J. Stat. Ann. §39:4-50.2. ² Probable cause for arrest must exist prior to application of implied consent law. N.J. Stat. Ann. §39:4-50.2. It is immaterial whether test was incident to lawful arrest. <i>State in Interest of MPC</i> , 397 A. 2d 1092 (1979). A motorist has no right under the implied consent statute to refuse to take a breathalyzer test. <i>State v. Quaid</i> , 412 A. 2d 1087 (1980). But N.J. Stat. Ann. §39:4-50.4 states that anyone who does refuse to submit to chemical testing will have his license suspended or revoked.
New Mexico	O ¹	● ²	O ³	¹ N.M. Stat. Ann. §66-8-10. In <i>State v. Trujillo</i> , 85 N.M. 208, 510 P. 2d 1079 (1973), a blood test without express consent was held valid inasmuch as the mere act of operating or driving the vehicle was taken as sufficiently establishing implied consent. ² Lawful arrest is the essential first step in enforcing the implied consent provisions. Test results not preceded by such lawful arrest or based on actual consent are inadmissible evidence. §66-8-105 to 66-8-112. <i>State v. Richerson</i> , 535 P. 2d 644, cert. den 535 P. 2d 657 (1975). ³ §66-8-108.
New York	O ¹	● ²		¹ N.Y. Veh. & Traf. Law 1194. ² §1193a states that drivers involved in an accident or violation of the rules of the road "shall, at the request of a police officer, submit to a breath test. . . ." However, test results may be used only to determine need for further testing and no penalty may accrue for refusal to take the test. <i>People v. Delaney</i> , 373 N.Y.S. 2d 477 (1975).
North Carolina	O ¹		O ²	¹ N.C. Gen. Stat. §20-16.2(a). ² Id. Para. (b). Consent is deemed to be granted if person is incapable of revoking it, but test or tests are to be administered subject to the provisions of General Statutes §20-139.1.
North Dakota	O ¹		O ²	¹ N.D. Cent. Code §39-20-01. ² §39-20-03.
Ohio	O ¹		O ²	¹ Ohio Rev. Code Ann. §4511.191(A). ² Id. Para (B).

CHART 2 / Blood Alcohol Concentration (BAC) Tests: Statutory Authority — Continued

State	Implied Consent With Arrest	Implied Consent Without Arrest	Implied Consent of Dead, Unconscious, or Incompetent Persons	Citation/Comment
Oklahoma	O ¹		O ²	<p>¹Okla Stat. Ann. tit. 47, §751. A valid arrest is essential to invoke provisions of implied consent law. <i>Application of Hendrix</i>, 539 P. 2d 1402 (Okla. Crim. App. 1975).</p> <p>²Implied consent statute is properly construed as meaning that person driving on public highways gives such consent to blood test in the event he is unconscious or dead as a result of accident, but upon regaining consciousness, the person can revoke his consent. <i>State v. Lord</i>, 576 P. 2d 1181 (Okla. Crim. App. 1978). Equal protection requires that an unconscious person be afforded the same right of refusal to submit to a blood test as that given a conscious person. <i>Sartin v. State</i>, 617 P. 2d 219 (1980).</p>
Oregon	O ¹			<p>¹Ore. Rev. Stat. §487.805. Consent is implied only for a chemical test of breath. For tests of blood, saliva, or urine, express consent is essential. §487.835. BAC test must be administered with defendants' voluntary and informed consent, which requires granting of opportunity to seek advice of counsel. <i>State v. Scharf</i>, 605 P. 2d 690 (1980). Opposite decision was reached in <i>State v. Malpass</i>, 580 P. 2d 209 (1978).</p>
Pennsylvania	O ¹	O ¹	O ²	<p>¹Pa. Stat. Ann. ch. 75, §1547 implies consent to breath or blood tests if the officer has reasonable grounds to believe a person was driving while under the influence of alcohol. License suspension will result for refusing BAC test, regardless of lawfulness of arrest. <i>Grabish v. Comm.</i>, 413 A. 2d 431 (Commw. 1980).</p> <p>²Administration of blood test on a driver in a stupor and unable to summon enough breath for breathalyzer test held valid. <i>Comm. v. Funk</i>, 385 A. 2d 995, 254 Pa. Infor. 233 (1978).</p>
Rhode Island	O ¹			<p>¹R.I. Gen. Laws Ann. §31-27-2.1.</p>
South Carolina	O ¹		O ²	<p>¹S.C. Code Ann. §56-5-2950.</p> <p>²§56-5-2950(c).</p>
South Dakota	O ¹			<p>¹S.D. Comp. Laws Ann. §32-23-10. Arrest is a prerequisite. <i>Kirby v. State</i>, 262 N.W. 2d 49 (S.D. 1978). Evidence of BAC test was held inadmissible in <i>State v. Bosanco</i>, 213 N.W. 2d 345 (S.D. 1973), where defendant was neither arrested nor charged with any offense before consenting to the blood test.</p>
Tennessee	O ¹	O ¹	O ²	<p>¹Tenn. Code Ann. §55-10-406. Consent is implied if the test is administered by a law enforcement officer who has reasonable grounds to believe the person was driving while under the influence of an intoxi-</p>

CHART 2 / Blood Alcohol Concentration (BAC) Tests: Statutory Authority —Continued

State	Implied Consent With Arrest	Implied Consent Without Arrest	Implied Consent of Dead, Unconscious, or Incompetent Persons	Citation/Comment
Tennessee (continued)				cant. Arrest is a prerequisite to imposing a penalty for refusal to submit to the test. ² Id. Para. (b). Upon regaining consciousness, driver may revoke consent.
Texas	O ¹			¹ Tex. Rev. Civ. Stat. Ann. art. 6701 I-5(1). For the purpose of chemical test of breath only. BAC test of urine or blood is possible only with the express consent of the defendant.
Utah	O ¹	O ¹	O ²	¹ Utah Code Ann. §41-6-44.10(a) and (b). Consent is implied if the test is administered by a peace officer having grounds to believe that the person was driving while under the influence. Arrest is a prerequisite to imposing a penalty for refusal to submit to the test. ² Id. Para. (c).
Vermont	O ¹	● ²	O ³	¹ Vt. Stat. Ann. tit. 23, §1202. ² Tit. 23, §1202. Arrest does not seem to be statutory prerequisite. ³ Id. Para. (a).
Virginia	O ¹			¹ Va. Code Ann. §18.2-268(b).
Washington	O ¹		O ²	¹ Wash. Rev. Code Ann. §46.20.308(1). The code states that unless the person to be tested is unconscious, the chemical test administered shall be of his breath only. However, breath or blood tests may be administered without consent of the arrested person if that person is arrested either for negligent homicide or DUI following an accident likely to result in death of an injured person. ² Id. Para. (2).
West Virginia	O ¹		O ²	¹ W. Va. Code Ann. §17C-5-4. Any person lawfully arrested for DWI has the right to demand a BAC test. §17C-5-9. ² §17C-5-7(a).
Wisconsin	O ¹		O ²	¹ Wis. Stat. Ann. §343.305(1). ² Id. Sub. Para. (c).
Wyoming	O ¹		O ²	¹ Wyo. Stat. Ann. §31-6-102(a). ² §31-6-102(b). The suspect may, however, withdraw the consent when he/she is conscious or becomes capable of refusing. <i>State v. Chastain</i> , 594 P. 2d 458 (1979). The investigating officer makes the determination as to "unconscious" or "incapable of refusal" based on the best available evidence. <i>Chastain supra</i> .

CHART 2 / Blood Alcohol Concentration (BAC) Tests: Statutory Authority — Continued

State	Implied Consent With Arrest	Implied Consent Without Arrest	Implied Consent of Dead, Unconscious, or Incompetent Persons	Citation/Comment
Washington, D.C.	O ¹		O ²	¹ D.C. Code Ann. §40-502(a)(b). ² §40-1505(b).
Puerto Rico	O ¹		O ²	¹ P.R. Laws Ann. tit. 9, §1043. ² Id. Para. (a).
Virgin Islands	O ¹			¹ V.I. Code Ann. tit. 20, §493(e).



BAC Tests after Traffic Accidents: Fatal and Nonfatal

State legislation requiring BAC tests after traffic accidents is depicted in chart 3. Several States, including California, Connecticut, Nebraska, and New Jersey, specifically require blood tests of a dead driver or other victim (passenger and/or pedestrian) of a traffic accident. The results of these tests are not uniformly admissible in criminal or civil suits, however. For the most part, these laws exist for statistical, not evidentiary, purposes. A number of States restrict the release of such records or expressly prohibit releasing reports until identifying data have been expunged.¹

Most States gather test reports from coroners or from officials performing testing functions who are required to withdraw the samples and submit periodic reports of accident-related deaths. Since breath tests are impossible with the dead and with the unconscious, BAC tests on such persons are performed with blood or occasionally with urine samples.

Few States expressly require testing or specify which tests should be useful for the purpose of measuring blood alcohol content following nonfatal accidents. Whether to administer such tests to a driver

involved in a nonfatal accident is generally left to the discretion of the law enforcement officer. The officer may request that any person driving or operating a vehicle take such a test if there is any reasonable question of DUI.

A few States, including Minnesota, Mississippi, Nebraska, New York, and North and South Dakota require compulsory BAC tests of a driver involved in an accident of any nature. When the test is truly compulsory, the officer is given no discretion to omit the test and the driver has no right to refuse to take the test.

It should be noted that even where the chart contains the symbol ●, meaning "no, the test is not mandatory," BAC testing would certainly be discretionary under the implied consent law. See chart 2 for those provisions.

¹U.V.C. §10-116(D) itself specifies that such test data be used mainly for "statistical purposes" without revealing the identity of the deceased person. Most States [e.g., Col-

orado, Idaho, Illinois, Minnesota, Missouri, Nebraska, New Mexico, New York, Pennsylvania, Utah, Washington, West Virginia, and Louisiana] follow this pattern.

CHART 3 / BAC Tests Required After Traffic Accidents

State	Fatal Accident			Non-Fatal Accident	Citation/Comment
	Driver Tested, If Alive	Driver Tested, If Dead	Non-Driver Tested	Driver Tested	
Alabama		● ¹			¹ Not specifically provided for by statute; however, in <i>Lankford v. Redwing Carriers, Inc</i> , 344 So. 2d 515 (Ala. 1977), the provisions of the BAC test law were deemed to have application to dead persons.
Alaska					The implied consent statute was intended to provide an exclusive method of obtaining direct evidence of a suspect's blood alcohol content, absent express consent to use another form of testing. If the test is refused by the suspect, no other chemical test is allowed. <i>Anchorage v. Geber</i> , 592 P. 2d 1187 (1979). The implied consent statute contains no provision mandating tests after traffic accidents. Alaska Stat. Ann. §28.35.031.
Arizona	● ¹	● ²			¹ Ariz. Rev. Stat. Ann. §28-692 prescribes penalty for refusal to take a BAC test. In <i>Campbell v. Superior Court</i> , 479 P. 2d 685 (Ariz. 1971), court held that this language does not create a right to refuse the test, but rather provides a way to avoid violent confrontation. If there is no "right to refuse" the implied consent test, presumably the test is mandatory for all drivers. But since §28-691 states that the test "shall be administered" at the direction of a police officer with reasonable cause to believe the driver is under the influence, the officer retains some discretion as to whether the test should be given following an accident.
Arkansas	● ¹	● ²	● ²	● ³	¹ Statute does not expressly authorize such tests, but they may be permissible under Ark. Stat. Ann. §75-1045(a). ² §§42-333 and 75-1045(b) can also be read as providing such authority. ³ Possible under §75-1045.
California	● ¹	○ ²	○ ³	● ¹	¹ Cal. Veh. Code §13353, as amended by Ch. 935 (Laws 1981), implies consent to BAC testing whenever a driver is arrested for any offense committed while DUI.

CHART 3 / BAC Tests Required After Traffic Accidents—Continued

State	Fatal Accident			Non-Fatal Accident	Citation/Comment
	Driver Tested, If Alive	Driver Tested, If Dead	Non-Driver Tested	Driver Tested	
California (continued)					<p>However, the driver may refuse the test and be subjected to license suspension instead.</p> <p>²Cal. Gov't Code §27491.25 and Cal. Veh. Code §13353(a). Any person dead or unconscious is deemed not to have withdrawn consent.</p> <p>³Id. Must be 15 years or older.</p>
Colorado	● ¹	○ ²	○ ³	● ¹	<p>¹Colo. Rev. Stat. Ann. §42-4-1202(3)(a) seems to require testing whenever a person is arrested for a DUI-related misdemeanor. But §42-4-1202(c) provides that the test may not be given if the driver refuses permission.</p> <p>²§42-4-1202(3)(d) and §42-4-1211(1) provide that a dead or unconscious person is deemed not to have revoked consent and may be tested if arrested for any DUI-related misdemeanor.</p> <p>³Id. Must be 15 years or older and have died within 4 hours of the crash.</p>
Connecticut	● ¹	○ ²	○ ²	● ³	<p>¹Conn. Gen. Stat. Ann. §14-227c permits testing of surviving drivers by the medical examiner "to the extent permitted by law." §14-227b states that drivers who refuse chemical tests will be penalized. Read together, the two provisions seem to permit surviving drivers to refuse testing even after a fatal accident.</p> <p>²§14-227c requires testing of any driver or pedestrian who dies as a result of an accident.</p> <p>³§14-227b implies consent to BAC test when driver arrested for DUI. Driver who refuses test will be penalized.</p>
Delaware	●	⊗	⊗ ¹	●	<p>¹Medical examiner must investigate casualties. Del. Code Ann. tit. 29 §§4706 and 4707.</p>

CHART 3 / BAC Tests Required After Traffic Accidents—Continued

State	Fatal Accident			Non-Fatal Accident	Citation/Comment
	Driver Tested, if Alive	Driver Tested, if Dead	Non-Driver Tested	Driver Tested	
Florida	● ¹	● ¹	●	●	¹ Possible under Fla. Stat. Ann. §322.261. Test may be administered to person who is incapacitated and admitted to hosp. as a result of his involvement as a driver in a motor vehicle accident ... Op. Atty. Gen. 073-361, Sept. 25, 1973.
Georgia	⊗ ¹	⊗ ¹	⊗ ¹	⊗ ¹	¹ §21-205 requires coroners to investigate accidental deaths, including traffic accidents. OAG U81-6. §21-227 authorizes the coroner to require blood tests of hospitalized or dead accident victims.
Hawaii	⊗ ¹	⊗ ¹	⊗ ¹	⊗ ¹	¹ Hawaii Rev. Stat. §286-151 and Act 67 (Laws 1981) allow police to obtain blood or breath from the drivers of any vehicle involved in an accident resulting in death or injury to any person. When read in conjunction with §841-3 which requires the coroner to investigate all accidental deaths, probably mandatory.
Idaho	● ¹	○ ²	○ ²	● ¹	¹ Idaho Code Ann. §49-352. After arrest, the driver's license will be suspended if (s)he refuses to submit to a chemical test. ² §49-1016 provides for blood test only. However, the results of the test are used exclusively for statistical purposes and the sample must not be identified with the name of the deceased.
Illinois	● ¹	○ ²	○ ²	● ¹	¹ Ill. Ann. Stat. Ch. 95 1/2, §11-501.1 (Act 82-311, Laws 1981) permits blood, urine, breath, or other bodily substance tests to be administered to those dead, unconscious, or unable to refuse a test. Anyone who refuses a BAC test will have his/her license suspended. ² Ch. 31, §10 requires tests of deceased drivers or pedestrians over 16.
Indiana	⊗ ¹	⊗ ^{1,2}	⊗ ^{1,2}	● ³	¹ Ind. Ann. Stat. §9-6-7-4 authorizes the toxicology department to require testing of surviving drivers to the extent practicable and consistent with the implied consent statute (§9-4-4.5-1). The implied consent law provides penalties for refusing the test. ² Under §9-6-7-4, bodies of all drivers and pedestrians 15 years of age or older who die within 4 hours of the crash may be tested. ³ May be permissible under §9-4-4.5-3 if driver becomes unconscious.
Iowa		● ¹	● ¹		¹ May be authorized by Iowa Code Ann. §§393.5 and 393.6.

CHART 3 / BAC Tests Required After Traffic Accidents—Continued

State	Fatal Accident			Non-Fatal Accident	Citation/Comment
	Driver Tested, if Alive	Driver Tested, if Dead	Non-Driver Tested	Driver Tested	
Kansas		● ¹	● ¹		¹ May be authorized under Kan. Stat. Ann. §§19-1031 to 19-1033.
Kentucky	⊗ ¹	⊗ ^{1,2}	⊗ ^{1,2}		¹ Language in Ky. Rev. Stat. Ann. §189.590 requiring coroners to report on the circumstances surrounding fatal accidents may impliedly require such tests. <i>Woosley v. Central Uniform Rental</i> , 463 S.W. 2d 345 (1971). An investigative officer or a coroner may direct taking of blood samples of dead if necessary. OAG 73-470; OAG 73-196. ² A person dead or unconscious is deemed not to have revoked implied consent to BAC test. Ky. Rev. Stat. Ann. §186.565.
Louisiana	⊗ ¹	⊗	⊗ ¹	⊗ ¹	¹ La. Rev. Stat. Ann. §32:661 states that motor vehicle operators are deemed to have given consent to chemical tests and that dead, unconscious, or incapacitated drivers are deemed not to have revoked consent. §32:398 gives police unspecified authority to investigate accidents and gives coroners unspecified authority to report the circumstances and cause of accidents.
Maine	O ¹			O ²	¹ Me. Rev. Stat. Ann. tit. 29, §1312(1)(c). Preliminarily, only a breath test is given; however, if results indicate alcohol consumption, the full BAC test is ordered.
Maryland	O ¹	O ¹	O ¹	O ¹	¹ If police officer has reasonable grounds to suspect DWI, detained driver is tested under Md. Transp. Code §16-205.1. Chemical test may be administered whenever there is any violation of any law that involves DWI, including violation of statute defining crime of homicide by motor vehicle while intoxicated; however, accused person is not compelled to submit to a BAC test notwithstanding that he or she signed a statement of consent as a prerequisite to obtaining a driver's license or renewal thereof. <i>Loscomb v. State</i> , 416 A. 2d 1276 (Md. App., 1980).
Massachusetts		O ¹	O ²		¹ Mass. Gen. Laws Ann. Ch. 38, §6A makes it a duty of the medical examiner to submit blood samples to the State police laboratory for BAC test purposes. ² Id.; pedestrians 16 years or older.
Michigan	● ¹	O ²		●	¹ Mich. Stat. Ann. §9.2325(3) implies consent whenever a driver is arrested for manslaughter or negligent homicide and police have reasonable cause to believe he was DWI. Implied consent does

CHART 3 / BAC Tests Required After Traffic Accidents—Continued

State	Fatal Accident			Non-Fatal Accident	Citation/Comment
	Driver Tested, if Alive	Driver Tested, if Dead	Non-Driver Tested	Driver Tested	
Michigan (continued)					not apply prior to arrest. <i>People v. Morse</i> , 68 Mich. App. 150. ² If driver is dead, a blood sample must be withdrawn as directed by the medical examiner, to determine BAC. The results of the test are used for statistical purposes only. §9.2325(3).
Minnesota	O ¹	O ²	O ³	O ⁴	¹ Minn. Stat. Ann. §169.123(2). ² §169.09(11). ³ Id. 16 years or older. ⁴ §169.123(2).
Mississippi	O ¹	O ²	O ³	O ⁴	¹ Miss. Code Ann. §63-11-7 requires blood testing of dead or unconscious accident victims if the police officer has reasonable grounds to suspect DWI. ² Id. Also possible under §63-3-419. ³ Required by §63-11-7 if person dies or is unconscious. Coroner must investigate traffic fatalities. §63-3-419. ⁴ Can be presumed from the wording of §§63-11-5 and 63-11-7. Unconscious drivers are tested under §63-11-7.
Missouri		O ¹	O ¹		¹ Mo. Rev. Stat. §§58.445 and 58.447. Although primarily used for statistical purposes, results can have evidentiary value <i>Benner v. B.F. Goodrich Co.</i> , 150 Mo. 97, 430 P. 2d 648 (1967).
Montana		⊗ ¹	⊗ ¹		¹ May be possible under Mont. Code Ann. §61-7-112.
Nebraska	O ¹	O ²	O ³	O ¹	¹ Neb. Rev. Stat. §39-6,104.08. ² §39-6,104.07. ³ Id. If over 16 years of age.
Nevada		O ¹	O ²		¹ Nev. Rev. Stat. §484.394. Blood sample or samples are to be drawn within 8 hours of the accident. ² Id. Unlike many other States, test results become matter of public record.
New Hampshire		O	O		¹ N.H. Rev. Stat. Ann. §262-A: 69I [recodified effective 1/82 as §265:93 (Ch. 146, Laws 1981)] requires testing of deceased drivers and adult pedestrians.

CHART 3 / BAC Tests Required After Traffic Accidents—Continued

State	Fatal Accident			Non-Fatal Accident	Citation/Comment
	Driver Tested, if Alive	Driver Tested, if Dead	Non-Driver Tested	Driver Tested	
New Jersey	O ¹	O ¹	O ¹		¹ N.J. Stat. Ann. §26:2B-24. Drivers and pedestrians who die must be tested, as must drivers who survive accidents fatal to others.
New Mexico		O ¹	O ¹		¹ N.M. Stat. Ann. §§66-7-211 and 24-11-6(b) require testing of dead auto accident victims.
New York	O ¹	O ²	O ³	O ⁴	¹ N.Y. Veh. & Traf. Law §1193-a. ² N.Y. County Law §674.3(b). ³ Id. 16 years of age or older. ⁴ N.Y. Veh. & Traf. Law §1193-a.
North Carolina		● ¹	● ¹		¹ May be possible under N.C. Gen. Stat. §152-7 and §20-166.1.
North Dakota	O ¹	O ²	O ²	O ¹	¹ N.D. Cent. Code §39-20-14 provides for "on-site screening test or tests" of driver's breath for the purpose of estimating alcohol content in his blood if a driver is involved in a traffic accident. ² §39-20-13.
Ohio	● ¹	● ¹	● ¹	● ¹	¹ May be possible under Ohio Rev. Code Ann. §4511.19.1(B), subject to §§313.12 to 313.16.
Oklahoma	● ¹	● ²	● ²	● ¹	¹ Okla. Stat. Ann. tit. 47, §751 seems to authorize such tests if police have probable cause to believe that the person was DWI. The person subjected to such tests has a right to revoke his consent upon regaining consciousness. <i>State v. Wood</i> , 576 P. 2d 1181 (1978). ² Okla. Stat. Ann. tit. 47, §10-113(b) can be construed to cover such tests.
Oregon		O ¹	O ¹		¹ Ore. Rev. Stat. §146.113(2). Blood or urine test is performed on over-13-year-olds to determine BAC.
Pennsylvania	● ¹	O ²	O ^{2,3}	● ¹	¹ Pa. Stat. Ann. tit. 75, §1547(i) permits any person involved in an accident or any driver arrested for DWI to request a breath test. ² Tit. 75, §3749(b). ³ Id. Applies to pedestrians over 15 years of age and all occupants (of a car) over 15 if the driver of the vehicle cannot be identified.
Rhode Island		● ¹	● ¹		¹ Although not specifically provided for, such tests are possible under R.I. Gen. Laws Ann. §23-4-9.

CHART 3 / BAC Tests Required After Traffic Accidents—Continued

State	Fatal Accident			Non-Fatal Accident	Citation/Comment
	Driver Tested, If Alive	Driver Tested, If Dead	Non-Driver Tested	Driver Tested	
South Carolina	● ¹	○ ²	○ ²	● ¹	<p>¹Possible under S.C. Code Ann. §56-5-2950 inasmuch as the section authorizes BAC tests on drivers arrested for <i>any offense arising out of acts</i> alleged to have been committed while DWI (emphasis added). Thus, in <i>State v. Martin</i> a driver involved in a two-car collision was administered a BAC test and the courts upheld the tests.</p> <p>²S.C. Code Ann. §17-7-80 requires coroners to take BAC tests.</p>
South Dakota	○ ¹	○ ²	○ ²	○ ¹	<p>¹S.D. Compiled Laws Ann. §32-23-1.2 provides for a PBT test after accidents. If the test indicates DWI, the law enforcement officer may require that the driver submit to a BAC test.</p> <p>²§34-25-22.1 permits such tests.</p>
Tennessee	○ ¹	⊗ ²	⊗ ²	⊗ ³	<p>¹§55-10-406(b).</p> <p>²Possible under §38-709. Also possible under §55-10-406. See <i>Bankers Life & Gas Co. v. Jenkins</i>, 547 S.W. 2d 237 (Tenn. 1977).</p> <p>³Possible under §55-10-406(b).</p>
Texas	● ¹	⊗ ²	⊗ ²	● ¹	<p>¹Possible under Tex. Rev. Civ. Stat. Ann. art. 6701 I-5.</p> <p>²Possible under art. 6701d §46.</p>
Utah	● ¹	○ ²	○ ²	● ¹	<p>¹Possible under Utah Code Ann. §41-6-44.10(c).</p> <p>²§26-1-30(17).</p>
Vermont	○ ¹	○ ²	○ ²		<p>¹Vt. Stat. Ann. tit. 23, §1203(d). See <i>State v. Welch</i>, 135 Vt. 316, 376 A. 2d 351 (1977).</p> <p>²Tit. 23, §1203(e).</p>
Virginia		⊗ ¹	⊗ ¹		<p>¹Possible under Va. Code Ann. §46.1-404.</p>
Washington	○ ¹	○ ¹	○ ¹	⊗ ²	<p>¹Wash. Rev. Code Ann. §46.20.308(1) requires BAC tests of drivers causing injury or death to another person even without the consent of the individual arrested. A blood test taken after appellant's arrest following an automobile accident in which two people died was found admissible at trial <i>despite</i> the fact that it was taken without his consent. <i>State v. Carranza</i>, 600 P. 2d 701 (1979). §46.52.065.</p> <p>²Possible §46.20.308.</p>
West Virginia	⊗ ¹	⊗ ²	⊗ ²		<p>¹Possible §17C-5-7.</p> <p>²W. Va. Code Ann. §§17C-4-11 and 17C-5-7.</p>

CHART 3 / BAC Tests Required After Traffic Accidents—Continued

State	Fatal Accident			Non-Fatal Accident	Citation/Comment
	Driver Tested, if Alive	Driver Tested, if Dead	Non-Driver Tested	Driver Tested	
Wisconsin	O ¹	O ²	O ³	O ¹	<p>¹Wis. Stat. Ann. §343.305(2)(am). There must be a validly issued citation before a law enforcement officer can subject the driver to such tests. OAG 93-78.</p> <p>²§346.71(2).</p> <p>³Deceased pedestrian tested if over 16 yrs. of age and dies within 6 hours of accident. Id.</p>
Wyoming	⊗ ¹	⊗ ²	⊗ ²	⊗ ¹	<p>¹Possible under Wyo. Stat. Ann. §31-6-102(b).</p> <p>²Presumably required under Wyo. Stat. Ann. §31-5-1111.</p>
Washington, D.C.	O ¹	O ¹	O ¹	O ¹	<p>¹D.C. Code Ann. §40-502(b) states that anyone involved in an accident must submit, upon request by police officer, to two chemical tests. A defendant subjected to BAC test while unconscious does not have any option to object to test upon regaining consciousness. <i>W.G. Murray v. United States & District of Columbia</i>, 358 A. 2d 314 (D.C. App. 1976).</p>
Puerto Rico	O ¹	O ²	O ²	⊗ ²	<p>¹P.R. Laws. Ann. tit. 9, §1043(c) provides for a PBT.</p> <p>²Tit. 9, §1043(a). Blood smears must be performed within 4 hours of the accident.</p>
Virgin Islands	⊗ ¹	O ²		⊗ ¹	<p>¹Such a requirement can be presumed from the wording of V.I. Code Ann. tit. 20, §493(c) and (d).</p> <p>²V.I. Code Ann. tit. 20, §493(j).</p>

IV

BAC Tests: Scope of Police Authority

Chart 4 illustrates the scope of police authority with respect to BAC urine and breath tests. While provisions for breath testing exist in all jurisdictions, 17 States (Alaska, Florida, Hawaii, Kansas, Maine, Maryland, Massachusetts, New Mexico, North Carolina, Oklahoma, Pennsylvania, South Carolina, Texas, Vermont, Virginia, Washington, and Puerto Rico) do not expressly authorize urine testing in their implied consent BAC laws. Since taking blood is a medical act, the scope of police authority in that field is minimal, and the taking of blood samples is specifically reserved in each State for persons who are medically qualified and/or duly certified. Police officers generally can only direct that blood be withdrawn from a defendant by recognized authorities in conformity with prescribed procedures.¹

¹U.V.C. §10-116(D) itself specifies that such test data be used mainly for "statistical purposes" without revealing the identity of the deceased person. Colorado, Idaho, Illi-

State laws vary with regard to the actual scope of police authority, and footnotes 1 to 6 provide some measure of the degree of authority in each State. The extent of police authority to actually perform sampling and testing depends upon the nature of the specimen collected. The scope of authority is broadest in matters involving breath and narrowest in matters involving blood. As shown in chart 4, many of the States simply provide for the tests to be "administered at the direction of the police officer" (footnote 5). Because so many of the States have adopted this language in enacting their BAC laws, the scope of sampling and testing authority is frequently ambiguous. The phrase "administered at the direction of the police" is extremely vague. It fails to answer the central question: Administered *by whom* at the

nois, Minnesota, Missouri, Nebraska, New Mexico, New York, Pennsylvania, Utah, Washington, West Virginia, and Louisiana follow this provision.

direction of the police? The answer in most cases must come from case law. Even then, the courts generally address only the case at hand, approving or disapproving police action under a given set of circumstances. The courts rarely attempt to make broad pronouncements about the scope of authority under circumstances other than those raised in the cases they are deciding.

Authority to collect specimens of urine or breath for purposes of BAC testing may be implied in statutory provisions that require police to follow rigorous procedures in directing qualified individuals to collect blood samples. These laws generally exempt the collection of urine or breath samples from these procedures. This exemption has been interpreted as implying police authority to take the samples of the latter without the help of qualified technicians. Again, case law must be examined to clarify the ambiguity.

CHART 4 / BAC Tests: Scope of Police Authority

State	Urine	Citation/Comment	Breath	Citation/Comment
Alabama	(¹)	Ala. Code §32-5-192. Specimen can be taken by police officer. The person tested must be given such privacy as will maintain his/her dignity as well as insure the accuracy of the specimen. However, performance of test must be according to methods approved by the State Board of Health. <i>Patton v. City of Decatur</i> , 337 So. 2d 321 (Ala. 1976); <i>Patterson v. State</i> , 344 So. 2d 543 (Ala. 1977).	(¹)	§32-5-192. Specimen can be taken by police officer. Law enforcement officer, and not the State or the city, designates which test is to be used. <i>Estes v. State</i> , 358 So. 2d 1050 [Ala. Ct. App. 1978, overruling <i>Weaver v. City of Birmingham</i> , 340 So. 2d 99 (Ala. Ct. App. 1976)].
Alaska	(⁴)		(⁵)	Alaska Stat. §§28.35.031.
Arizona	(³)	Ariz. Rev. Stat. Ann. §28.692(e) provides that "only a physician or a registered nurse or other qualified person, other than the arresting officer, may withdraw blood or take the urine specimen . . ."	(¹)	§§28-691(a) and 28-692(e) allow the arresting officer to take a breath specimen.
Arkansas	(¹)	Ark. Stat. Ann. §§75-1045(a) and (c). Specimen can be collected by police officers. To be valid, tests (of breath, blood, or urine) are to be performed according to methods approved by the Arkansas State Board of Health. §§75-1045(c) and 75-1046.	(¹)	§§75-1045(a) specimen can be collected by police officers. §75-1046(b). Department of Health may issue permits to individuals who qualify to administer tests.
California	(⁵)	Cal. Vehicle Code §13354(c).	(⁵)	§13354(a).
Colorado	(⁵)	Colo. Rev. Stat. Ann. §42-4-1202(3)(b).	(⁵)	§42-4-1202(3)(b).
Connecticut	(²)	Conn. Gen. Stat. Ann. §14-227a(b)(1). 1981 Conn. Pub. Act 446 §2 (Amending §14.228a(b)(1)) states that test results are admissible provided that two tests were performed, and the second test was performed not less than 30 or more than 40 minutes after the first test.	(²)	§14-227a(b)(2). Consent of the defendant to undergo two tests is precondition for admissibility of the test results. §14-227a(b)(1).
Delaware	(¹)	Del. Code Ann. tit. 21, §2741. Although only qualified personnel can administer the tests, police officer can obtain the specimen. Tit. 21, §2746.	(¹)	Tit. 21, §2741.
Florida	(⁴)		(¹)	Fla. Stat. Ann. §322.261(2)(a), (b). A police officer can take a breath specimen.
Georgia	(^{2,5})	Ga. Code Ann. §68A-902.1 authorizes blood, breath, urine, or other bodily substances to be tested by an individual with a valid permit to test. §68B-306 states that such tests shall be administered at the request of the law enforcement officer.	(²)	Copy of police officer's certification to conduct breath tests was admissible in evidence <i>Hunter v. State</i> , 233 S.E. 2d 252.
Hawaii	(⁴)	Hawaii Rev. Stat. §§286-151 and 286-154 provide for breath and blood test only, not urine test.	(¹)	§286-152 authorizes police officer to take breath specimen. Specimen has to be collected within 3 hours after the alleged violation of the DUI laws, according to §291-5. §321-161 provides for a standard chemical testing program (BAC).

See footnotes at end of table.

CHART 4 / BAC Tests: Scope of Police Authority — Continued

State	Urine	Citation/Comment	Breath	Citation/Comment
Idaho	(⁶)	Idaho Code §49-352. However, police officer can presumably take urine, breath, and saliva specimen under §49-354, which states that only physicians, nurses, etc. can take blood tests but that "this limitation shall not apply to the taking of urine, saliva, or breath specimens."	(⁶)	§49-352. Specimen can probably be taken by the police officer. §49-354.
Illinois	(^{2,5})	Ill. Ann. Stat. ch. 95 1/2, §11-501.1.	(^{2,5})	Ill. Ann. Stat. ch. 95 1/2, §11-501.1.
Indiana	(²)	Ind. Stat. Ann. §9-4-4.5-2.	(²)	§9-4-4.5-2 states that breathalyzer tests may be performed "by a person using techniques and equipment approved by the Department of Toxicology of the Indiana University School of Medicine."
Iowa	(¹)	Iowa Code Ann. §321B.4 authorizes a "peace officer" (which includes police) to take specimen. However, police officer has to furnish written request for such act and it appears that testing of specimen is done at the direction of, not by, the police.	(¹)	§321B.4 authorizes the police officer in his or her capacity as a peace officer to take such specimen, although it is not clear whether police actually perform the testing on the specimen.
Kansas	(⁴)	Kan. Stat. Ann. §8-1001.	(⁵)	§8-1001.
Kentucky	(⁵)	Ky. Rev. Stat. Ann. §186.565(1).	(⁵)	§186.565(1).
Louisiana	(^{2,5})	Under §32:661, tests are given at the direction of a police officer; however, La. Rev. Stat. Ann. §32:663 provides for testing by certified persons, which could include officers.	(^{2,5})	§§32.663 and 32.664.
Maine	(⁴)	Me. Rev. Stat. Ann. tit. 29, §1312 does not provide for such test.	(^{1,5})	Tit. 29, §1312.6. Police officer may collect specimen for test by approved authorities, or with the consent of the defendant may administer the breathalyzer test using approved tools/machines.
Maryland	(⁴)	Md. Transp. Code Ann. §16-205.1 no longer provides for urine tests.	(²)	§16-205.1(d)(1) and Md. Cts. & Jud. Proc. Code Ann. §10-304(b).
Massachusetts	(⁴)		(^{1,5})	Mass. Gen. Laws Ann. ch. 90, §24. However, for purposes of evidence, consent of person tested "by" or at the direction of the police officer, must be obtained. Ch. 90, §24(e).
Michigan	(⁵)	Mich. Rev. Stat. Ann. §§9.2325(1)(2), (3)(2), and (3)(3) state that the test must be taken "in a reasonable manner" at the request of the officer.	(⁵)	§9.2325(3)(2). §9.2325(1)(2). In prosecutions for other than DUI, breathalyzer test can be compelled and results admitted in evidence without derogation of constitutional right against self-incrimination or as offensive to sense of justice. <i>People v. Kenn</i> , 56 Mich. App. 84 (1974).
Minnesota	(⁶)	Minn. Stat. Ann. §169.123(2). However, the police officer may be able to take a specimen under §169.123(3).	(⁶)	§169.123(2). However, §169.123(3) may authorize collection of breath specimen.

See footnotes at end of table.

CHART 4 / BAC Tests: Scope of Police Authority — Continued

State	Urine	Citation/Comment	Breath	Citation/Comment
Mississippi	(1,5)	Miss. Code Ann. §63-11-5. Police officer has to ensure privacy as well as accuracy while collecting specimen. §63-11-11.	(1,5)	§63-11-5.
Missouri	(2,6)	Mo. Rev. Stat. §577.020 provides for breath test only, while §577.030 specifically talks of evidence based on chemical test of urine implying that like breath tests, such test can be performed by officials duly certified by the division of health.	(1,5)	§577.020 specifically says that the test shall be administered by or at the direction of a law enforcement officer.
Montana	(5)	Mont. Code Ann. §61-8-402(1). Police may request specimens under §§61-8-405(1) and (5).	(5)	Police officer may request specimens. §61-8-405(1).
Nebraska	(2)	Neb. Rev. Stat. §39-669.11. Tests are performed only by those with a valid permit.	(2)	§39-669.11. However, for purposes of PBT, the police officer is directly authorized to take the test.
Nevada	(5)	Nev. Rev. Stat. §484.383(1).	(5)	§484.383(1).
New Hampshire	(5)	N.H. Rev. Stat. Ann. §262-A:63-i [recodified effective 1/82 as §265.85(1) (Ch. 146, Laws 1981)]	(5)	§262-A:63-i [recodified effective 1/82 as §265.85(1) (Ch. 146, Laws 1981)].
New Jersey	(2,5)	N.J. Stat. Ann. §§39:4-50.2, 39:4-50.3.	(2,5)	§§39:4-50.2, 39:4-50.3.
New Mexico	(4)		(5)	N.M. Stat. Ann. §66-8-107.
New York	(2,5)	N.Y. Veh. & Traf. Law §§1194(1), (7), and (9).	(2,5)	§§1194(1), (7), and (9).
North Carolina	(4)		(5)	N.C.Gen. Stat. §20.16.2(a). But the arresting officer <i>cannot</i> administer the test. §20.139.1(b).
North Dakota	(5,6)	N.D. Cent. Code §39-20-01. However, it is unclear whether the policeman may administer the test. §39-20-02 states that the limits on taking blood samples (physician or nurse only) do not apply to breath tests.	(5,6)	§39-20-01. It is unclear whether the policeman may administer the test. §39-20-02.
Ohio	(2,5)	Ohio Rev. Code Ann. §4511.191(A). However, under §3701.143 a police officer may be authorized to perform such tests. Collection may be allowed under §4511.19.	(2,5)	§4511.19(A). Collection may be allowed under §4511.19. Under §3701.143, a police officer may be authorized to perform such tests.
Oklahoma	(4)		(5)	Okla. Stat. Ann. tit. 47, §751. Collection of specimens is possible under tit. 47, §752 which states that limit on nonmedical personnel taking blood that does not apply to breath test.
Oregon	(5)	Ore. Rev. Stat. §487.835. Test is possible only by express consent of the arrested person.	(5)	§487.805; §487.815.

See footnotes at end of table.

CHART 4 / BAC Tests: Scope of Police Authority — Continued

State	Urine	Citation/Comment	Breath	Citation/Comment
Pennsylvania	(⁴)		(²)	Pa. Stat. Ann. tit. 75, §1547(a).
Rhode Island	(^{2,5})	R.I.Gen. Laws Ann. §31-27-2.1(a).	(^{2,5})	§31-27-2.1(a).
South Carolina	(⁴)		(^{3,5})	S.C. Code Ann. §56-5-2950(a).
South Dakota	(⁵)	S.D. Code §32-23-10. Under §32-23-14, limitation on nonmedical personnel taking blood for test does not apply to taking of urine specimen.	(⁵)	§32-23-10. Under §32-23-14, limitation on nonmedical personnel taking blood for test does not apply to taking of breath specimen.
Tennessee	(⁵)	Tenn. Code Ann. §55-10-406(a).	(⁵)	§55-10-406(a).
Texas	(⁴)		(^{5,2})	Tex. Rev. Civ. Stat. Ann. art. 6701 I-5, §3(c). Limitation on nonmedical personnel taking blood for test does not apply to taking of breath specimen. A police officer who is certified as Breath Test Operator can administer the test. Art. 6701 I-5, §3(b).
Utah	(⁵)	Utah Code Ann. §41-6-44.10(a). Under §41-6-44.10(e), limitation on nonmedical personnel taking blood for test does not apply to taking of urine specimen.	(⁵)	§41-6-44.10(a). Under §41-6-44.10(e), limitation on nonmedical personnel taking blood for test does not apply to taking of breath specimen.
Vermont	(⁴)		(¹)	Vt. Stat. Ann. tit. 23, §§1202-1203(a) (Act 103, Laws 1981). Police officer who is properly certified by the Vermont Criminal Justice Training Council pursuant to tit. 20, §2358 can collect the specimen (and administer the test).
Virginia	(⁴)		(²)	Va. Code Ann. §18.2-268(rl) (Ch. 424, Laws 1981). However, the arresting officer may not make the test or analyze the results.
Washington	(⁴)	If an arrested motorist gives urine sample, uncontested urinalysis is admissible in prosecution (for negligent homicide) absent showing that the sample was taken in unreasonable manner in violation of general constitutional safeguards. <i>State v. Rochelle</i> , 527 P. 2d 87 (Wash. 1975).	(⁵)	Wash. Rev. Code Ann. §46.20.308.
West Virginia	(^{1,5})	W.Va. Code Ann. §§17C-5-4. Collection of specimen is possible under §17C-5-6.	(^{1,5})	§17C-5-4. Collection of specimen is possible under §17C-5-6.
Wisconsin	(^{1,5})	Wis. Stat. Ann. §343.305(1). Collection of specimen is possible under §343.305(10a).	(^{1,5})	§343.305(1).
Wyoming	(⁵)	Wyo. Stat. Ann. §31-6-102.	(⁵)	§31-6-102(a).

See footnotes at end of table.

CHART 4 / BAC Tests: Scope of Police Authority — Continued

State	Urine	Citation/Comment	Breath	Citation/Comment
Washington, D.C.	(^{1,5})	D.C. Code Ann. §40-502. However, specimen can be collected by an officer. §40-503. Urine specimen is admissible at the trial for DWI despite absence of medical supervision at time of taking of test. <i>Davis v. District of Columbia</i> , 247 A. 2d 417 (D.C. App. 1969).	(^{1,5})	§40-502. Collection of specimen is authorized. §40-503.
Puerto Rico	(⁴)		(⁵)	P.R. Laws Ann. tit. 9, §1043(a).
Virgin Islands	(⁵)	V.I. Code Ann. tit. 20 §493(e). Collection of specimen is possible, however. Id. Para. (g).	(⁵)	Tit. 20, §493(e). Collection of specimen is possible. Id. Para. (g).

¹Police officer directly authorized to take sample.

²A "certified" person including a police officer is authorized to take sample.

³Police officer is not authorized to take sample.

⁴No express authority to take sample.

⁵Testing is possible under the 'direction' of police officer.

⁶Unclear.



BAC Tests: Defendant's Options

Whether a defendant can select the type of BAC test to be initially administered and whether supplemental tests are available are examined in chart 5. Although States almost invariably authorize chemical tests of breath, urine, or blood (and less frequently of saliva or other bodily substances), almost half of the States expressly authorize the police officer to choose the initial BAC test. A few States do permit the defendant to select which test will be administered. Hawaii, Maine, Maryland, Oklahoma, Oregon, Texas, Virginia, Wyoming, and Puerto Rico, for example, all authorize the defendant to select the initial test. Although only a few jurisdictions (including Connecticut, Nevada, New Hampshire, Wyoming, and Washington, D.C.) specifically provide for the right of a defendant to refuse a blood test on religious or medical grounds, e.g., hemophiliacs, diabetics, or users of anticoagulants, most States probably would accept such grounds as a defense in license revocation hearings.

In offering or permitting the choice of tests, the States frequently consider the availability of test facilities and the time and circumstance of the arrest. For example, Washington, D.C., assures the defendant a choice of tests where

such choice is available and possible. Care generally is exercised to ensure that the choice of tests will not affect the test's outcome. To ensure a proper measurement of the alcohol content in blood, the specimen to be tested must be withdrawn within a specified time period—generally within a few hours of the incident.¹

All States seem to offer the possibility of supplementary tests. As chart 5 illustrates, supplementary tests are deemed a matter of right in Arizona, Arkansas, California, Connecticut, Delaware, Iowa, Kansas, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, New Hampshire, New Jersey, North Carolina, and Texas. In others, statutory language permitting the introduction of "other evidence" relevant to the issue of intoxication seems to imply that supplemental tests would be given some weight in a court of law. Only in the Indiana statutes is there no

mention of either supplementary tests or the admissibility of other relevant evidence. But even in this case, supplemental tests are at least not prescribed.

In almost every jurisdiction, the supplemental test must be obtained at the expense of the defendant. New Mexico seems to be the sole exception to this rule. Presumably, the unavailability of such further testing to an indigent has only a remote possibility of vitiating the results of the official tests, given that the evidentiary weight of the official tests are not dependent upon such supplemental test results. In fact, State laws are rather specific that the absence of any supplementary test results does not in any way reduce the value of the official results. In some States, such as North Carolina, officials are required not only to inform the defendant of opportunities for supplementary tests, but are also required to help administer such tests to the defendant.

Almost all States allow the supplementary test results to be used as evidence when the issue is driving while under the influence of alcohol. The presumption is in favor of the official tests, although any other evidence, if competent, can be offered by the defendant against the official contention.

¹The lapse of time between the test and the arrest is vital in determining whether the test is performed incident to arrest. Since a BAC test must be incident to arrest, a lapse of 14 days was found not justified as "incident" to arrest under any theory. *State v. Byers*, 224 S.E. 2d 726 (W. Va. 1976).

CHART 5 / BAC Tests: Defendant's Options

State	Choice of Tests	Citation/Comment	Supplemental Test	Citation/Comment
Alabama	●	Ala. Code, §32-5-192. Defendant can object to blood test. However, defendant has no "right" to refuse to submit to chemical testing; nor does a person have a constitutional or statutory right to counsel (or physician). Evidence of defendant's refusal to take BAC test is admissible and deemed not to violate any constitutional or State privilege against self-incrimination. <i>Hill v. State</i> , 366 So. 2d 318 (Ala. 1979).	○	§32-5A-194(b)(3) permits supplemental testing; expense of the added test to be borne by the defendant. §32-5A-194 (b)(4) provides for introduction of "any other competent evidence" bearing upon the issue of DUI.
Alaska	●	Alaska Stat. §28.35.032. Police designate tests. Refusal of test is admissible as evidence. Once a breath test is refused no other chemical test will be allowed. <i>Anchorage v. Geber</i> , 592 P. 2d 1187 (1979).	○	Alaska Stat. §28.35.033(e) permits a person tested to have a physician or other qualified person administer a supplemental chemical test. Person has no right to be advised of the right to obtain independent test. <i>Palmer v. State</i> , 604 P. 2d 1106 (1979).
Arizona	●	Ariz. Rev. Stat. Ann. §28-692(F). Law enforcement agency designates test. Evidence of refusal to take test is admissible.	○	§28-692F. State's interference with the accused's right to supplemental test violates due process. <i>State ex rel. Webb v. City Court of City of Tucson</i> , 542 P. 2d 407 (App. 1975). Also see §28-692(B)(4); <i>Smith v. Granskie</i> , 562 P. 2d 407 (App. 1975). Also see §28-692(B)(4); <i>Smith v. Cada</i> , 114 Ariz. 510, 562 P. 2d 390 (1977).
Arkansas	●	Ark. Stat. Ann. §75-1045(a). Law enforcement agency alone designates which of the tests shall be administered. However, if any person shall object to taking of blood for such a test, the breath or urine of the person may be used to make the analysis.	○	Person must be advised of his right to supplemental tests. §75-1045(c)(3). However, cost is borne by the defendant. §75-1045(a).
California	○	Cal. Veh. Code §13353(a). Extraction of blood from a person arrested for DUI over objection and without offering the choice of tests set out in the Vehicle Code is deemed denial of equal protection. <i>People v. Caves</i> , 143 Cal. Repr. 909 (Cal. Ct. App. 1978). Refusal to take the test is admissible.	○	§13354(b). Person tested may at his own expense have a person of his choosing administer additional test, but failure to do this shall not preclude admissibility in evidence of test taken at direction of peace officer.
Colorado	○	Colo. Rev. Stat. Ann. §42-4-1202(3)(a) provides that if the defendant requests that the chemical test be a blood test then "the test shall be of his blood." But if the defendant refuses a blood test—then the choice between the breath or urine test is made by the arresting officer. Refusal to take the test is not admissible in criminal prosecutions. §42-4-1202(3)(h).	⊗	§42-4-1202(2)(d) permits the introduction of other competent evidence on the issue of intoxication.
Connecticut	○	Conn. Gen. Stat. Ann. §14-227b. Moreover, such tests can also be avoided on valid medical ground. §14-227b.	○	§14-227a(b)(5). Showing that the defendant was provided with opportunity for an additional chemical test is a condition precedent to the introduction of evidence of the result of a chemical test of his breath. <i>State v. Anonymous</i> , 388 A. 2d 840 (Conn. 1978).

CHART 5 / BAC Tests: Defendant's Options—Continued

State	Choice of Tests	Citation/Comment	Supplemental Test	Citation/Comment
Delaware	●	Del. Code Ann. tit. 21, §§2741 and 4177(a) provide that police officer shall designate which of the tests, i.e., breath, blood, or urine, shall be administered. <i>Warren v. State</i> , 385 A. 2d 137 (Del. 1978).	⊗	<i>Slaughter v. State</i> , 322 A. 2d 15 (Del. 1974) upheld the defendant's right to introduce "evidence" of his own to show inadequacy or mistakes of official test(s).
Florida	○	Fla. Stat. Ann. §322.261(1)(h) authorizes driver to request a test if the police officer has not done so.	○	§322-261(2)(c). Specifically provides that test is to be at defendant's expense.
Georgia	●	Ga. Code Ann. §68B-306. Requesting law enforcement officer designates the test or tests. Right of defendant to select type of test applies only to supplemental, not initial, test. Op. Atty. Gen. 77-21.	○	§68-902.1(a)(3). Police officer must advise the defendant of his or her right to independent test. <i>Smith v. State</i> , 238 S.E. 2d 698 (Ga. 1977). In view of failure to advise defendant of right to supplemental tests, license revocation for refusal to take blood test is improper. <i>Adams v. Hardison</i> , 264 S.E. 2d 693 (1980).
Hawaii	○	Hawaii Rev. Stat. §286-151. Provides that the defendant has the option to take a breath or blood test, or both.	○	§286-153. Specifically provides for supplemental test or tests in addition to any administered at the direction of a police officer.
Idaho	●	Idaho Code §49-352 implies consent to blood, breath, urine, or saliva tests, but does not specify who selects the test to be given. Tests are given "at the direction of the police officer," which may imply that the police select the test.	○	§49-355 permits additional tests and §49-1102(b)(4) provides for admissibility of such supplemental tests.
Illinois	●	Under Ill. Ann. Stat. ch. 95 1/2, §11-501.2, police officer designates type of test to be given.	○	Ch. 95 1/2, §11-501.2(a)(3) permits additional chemical tests.
Indiana	●	Ind. Stat. Ann. §9-4-4.5-2 defines chemical test to mean an analysis of the breath, blood, urine, or other bodily substance . . . "including a 'breathalyzer' test". §9-4-4.5-1 states that all drivers imply consent to such testing "when asked to submit to such test by any law enforcement officer."	●	The informed consent law does not address the issue of supplemental testing.
Iowa	●	Iowa Code Ann. §321B.3. Although the police officer determines the test to be taken, a person can refuse a blood test. However, in such a case, the police officer determines which one of the other tests the person has to take.	○	§321B.4 permits independent chemical test or tests.
Kansas	●	Kan. Stat. Ann. §8-1001 implies consent to a chemical test of blood or breath administered at the direction of the law enforcement officer. The statute is ambiguous as to whether a defendant has any option regarding the test. However, blood sample taken by deputy coroner without consent of the defendant was held	○	§8-1004 provides that supplemental tests are a matter of right and that the evidentiary value of the "official" tests is nullified if such right to supplemental tests is denied. Moreover, §8-1006 also assures the submission or introduction of additional evidence by the defendant. However, test operator is not required to

CHART 5 / BAC Tests: Defendant's Options—Continued

State	Choice of Tests	Citation/Comment	Supplemental Test	Citation/Comment
		inadmissible. <i>State v. Gordon</i> , 219 Kan. 643, 549 P. 2d 886 (1976).		inform person tested of rights to independent test. <i>City of Shawnee v. Gruss</i> , 2 Kan. 2d 131, 576 P. 2d 239 (1978).
Kentucky	●	Ky. Rev. Stat. Ann. §186.565 empowers the law enforcement officer to designate the test. The law officer has to demand that a person take the test to invoke the penalties of refusal. <i>Dept. of Pub. Safety v. Powers</i> , 453 S.W. 2d 260 (Ky. 1970).	○	§189.520(8) permits the person tested to have additional tests taken. §189.520(5) provides for admission of other competent evidence.
Louisiana	●	La. Rev. Stat. Ann. §32:661 empowers the police to designate which of the tests shall be administered.	○	§32:662(C) provides for introduction of supplemental test results and §664(B) makes opportunity for supplemental tests a right.
Maine	○	Me. Rev. Stat. Ann. tit. 29, §1312 specifically states that the law enforcement officer informs the defendant of the tests available, and the "said accused" (defendant) "shall select and designate one of the tests" (breath or blood). If he selects a breath test, the police officer determines which type of breath test will be given.	⊗	Tit. 29, §1312(5)(B) mentions "other competent evidence," presumably leaving the door open for such supplemental tests. The burden of introducing such evidence lies with the defendant.
Maryland	○	Md. Transp. Code Ann. §16-205.1(a); Md. Cts. and Jud. Proc. Code Ann. §10-305(a). Defendant has the right to select the type of test administered.	○	Md. Cts. and Jud. Proc. Code Ann. §10-304(d). A person is permitted to have a supplemental test performed by a physician of his own choosing, the results of which are admissible as evidence under §10-307(a). §10-308 also allows introduction of other evidence, presumably including supplemental tests.
Massachusetts	●	Mass. Gen. Laws Ann. ch. 90, §24 provides for chemical test or breath analysis; defendant is not expressly granted the right to choose either of the tests.	○	Supplemental tests are authorized under ch. 263, §5A, as well as under ch. 90, §24(1)(e). However, tests are at defendants' "own expense" and lack of such tests at public expense is not a defense for indigent. <i>Com. v. Tessier</i> , 360 N.E. 2d 304 (Mass. 1977).
Michigan	●	Mich. Stat. Ann. §9.2325(1) is ambiguous as to who makes the initial choice of the test. In <i>Collins v. Secy. of State</i> , 187 N.W. 2d 423 (1971), the court said that the initial choice lies with the police, at which time defendant can refuse the test and face the penalty or refuse and demand that only a breath test be given. According to §9.2325(1) defendant may demand that only a breath test be given, in which case the defendants' refusal to submit to a urine or blood test shall not constitute a refusal.	○	Under §9.2325(1) motorist has right to be given the opportunity within a reasonable time to take supplemental tests. <i>People v. Lambert</i> , 235 N.W. 2d 338, 395 Mich. 296 (1975). §9.2325(1) also provides for the introduction of other competent evidence bearing upon the issue of DWI.

CHART 5 / BAC Tests: Defendant's Options—Continued

State	Choice of Tests	Citation/Comment	Supplemental Test	Citation/Comment
Minnesota	<input type="radio"/>	Minn. Stat. Ann. §169.123(2)(a). Any person may decline to take a blood test and elect either a breath or urine test.	<input type="radio"/>	§169.123(3). The expense is borne by the defendant, however. The failure to obtain such supplemental tests does not, however, preclude admission of official test results, unless defendant was prevented from doing so by the officer.
Mississippi	<input checked="" type="radio"/>	Miss. Code Ann. §63-11-5 fails to specify who selects the type of test to be given. But §63-11-21 states that anyone who refuses to submit to the test "designated by the law enforcement agency as provided in §63-11-5" will have his license confiscated.	<input type="radio"/>	§63-11-13. Cost is to be borne by the accused. The absence of such test results, however, does not affect the evidentiary value of the official tests.
Missouri	<input checked="" type="radio"/>	The implied consent law provides for breath test alone. Mo. Rev. Stat. §577.020. However, §577.030 accords equal status, for the purpose of evidence, to urine, blood, or saliva test results. Neither provision addresses the issue of who designates which test will be administered.	<input type="radio"/>	§577.020(3) and §577.030(3).
Montana	<input checked="" type="radio"/>	Mont. Rev. Codes Ann. §61-8-402(1) states that the police officer may designate which of the tests will be administered.	<input type="radio"/>	§61-8-405(2) provides for supplemental tests at defendant's expense and §61-8-404(3) authorizes their admission as evidence.
Nebraska	<input type="radio"/>	Neb. Rev. Stat. §39-669.09 authorizes the officer to designate the type of test. If the officer designates either blood or urine, the driver may choose between the two. However, the accused waives the right to choose the type of test by voluntarily taking either without objection. <i>State v. Wahrman</i> , 199 Neb. 337, 258 N.W. 2d 818 (1977).	<input type="radio"/>	§39-669.09 specifically states that supplemental tests must be permitted. Refusal of request for supplemental tests would vitiate the competency of the official tests. See <i>State v. Wahrman</i> , 199 Neb. 337, 258 N.W. 2d 818 (1977).
Nevada	<input type="radio"/>	Nev. Rev. Stat. §484.383 states that when BAC is in issue, the defendant can refuse a blood test if means for urine or breath test are available. A person may also refuse a blood or urine test if breath test can be performed. §484.383(5). Persons afflicted by hemophilia can also refuse blood test. However, if the issue is the presence of a controlled substance, a person can refuse a blood test if urine test is available, but a person may not opt for a breath test in lieu of blood or urine test. §484.383(5).	<input type="radio"/>	§484.391 authorizes supplemental tests at driver's expense.
New Hampshire	<input checked="" type="radio"/>	N.H. Rev. Stat. Ann. §262-A:62 [recodified effective 1/82 as §265:84 (Ch. 146, Laws 1981)] states that the tests are "administered at the direction of a law enforcement officer." However, §262-A:69-e [recodified effective 1/82 as §265:92 (Ch. 146, Laws 1981)] establishes penalties for refusal to take the "test designated by the law enforcement officer" as provided in §262-A:69-a (§265:84 as of 1/82).	<input type="radio"/>	§262-A:69-c [recodified as §265:86 (Ch. 146, Laws 1981)] assures such right to supplemental tests. Section 262-A:63 [recodified effective 1/82 as §265:87 (Ch. 146, Laws 1981)] requires that the police officer apprise the defendant of the right to such tests as a prerequisite to admissibility of the official test results as evidence. §265:88 also provides for their admissibility as evidence.

CHART 5 / BAC Tests: Defendant's Options—Continued

State	Choice of Tests	Citation/Comment	Supplemental Test	Citation/Comment
New Jersey	●	The implied consent law, N.J. Stat. Ann. §39:4-50.2, implies consent only to a breath test. Supplemental tests of breath, urine, or blood may be made at the driver's request.	○	§39:4-50.2(c) permits any person who has undergone an implied consent breath test to have supplemental tests of breath, urine or blood. Police must inform the driver of this right.
New Mexico	●	N.M. Stat. Ann. §66-8-107(B) implies consent to either a breath or blood test administered under the "direction of a law enforcement officer." Unclear whether officer designates the initial test. Defendant clearly has choice as to supplemental tests.	○	§66-8-109(B) and (E) and §66-8-110(D). The defendant need not be told of right to additional tests. <i>State v. Myers</i> , 88 N.M. 16, 536 P. 2d 280 (1975). State pays for the supplemental test when defendant opts for it. §66-8-109(E).
New York	●	N.Y. Veh. & Traf. Law §1194 states that such test is administered at the direction of a police officer. Who designates the type of initial test is unclear, although case law has stated that driver asked to submit to a chemical test could not impose condition that he would only submit to blood test performed by own doctor. <i>Cushman v. Tofany</i> , 321 N.Y.S. 2d 831 (1971).	○	Driver does have a choice of supplemental tests. §1194(8).
North Carolina	●	N.C. Gen. Stat. §20-16.2(a) authorizes the law enforcement officer to designate the tests.	○	§20-16-2(a)(3). The police officer must assist in contacting someone qualified to administer the test. §20-139-1(d).
North Dakota	●	N.D. Cent. Code §39-20-01 requires the arresting officer to determine the test to be administered. Where defendant agreed to submit to blood test, but changed his mind and offered to submit to breathalyzer test instead, defendant's refusal to submit to test chosen by arresting officer constituted refusal leading to license revocation. <i>Clairmont v. Hjelle</i> , 234 N.W. 2d 13 (N.D. 1975).	⊗	§39-20-02. §39-20-09 allows admission of other competent evidence.
Ohio	●	Ohio Rev. Code Ann. §4511.191(A). The law enforcement agency designates the test.	○	§4511.19.
Oklahoma	○	Okla. Stat. Ann. tit. 47, §751 states that the test or tests (of defendant's blood or breath) be at defendant's election.	○	Tit. 47, §752 authorizes supplemental tests. However, the failure or inability to obtain an additional test by defendant does not preclude the admission of the results of the official test or tests. Furthermore, the test results are not admissible in civil suits (tit. 47, §752), although they should be admissible in criminal prosecution under tit. 47, §757.
Oregon	○	Oreg. Rev. Stat. §487.835. Express consent is essential for chemical test of blood, saliva, or urine. Defendant can choose between a breathalyzer test under §487.805 or a chemical test under §487.835.	○	§487.810. Test is at one's own expense, but the person must be afforded a reasonable opportunity to obtain the supplemental test. See <i>State v. Creson</i> , 576 P. 2d 814 (Ore. App. 1978).

CHART 5 / BAC Tests: Defendant's Options—Continued

State	Choice of Tests	Citation/Comment	Supplemental Test	Citation/Comment
Pennsylvania	●	Under Pa. Stat. Ann. tit. 75, §1547(g), if a person cannot provide sufficient breath specimen, a blood test may be taken. Otherwise, no choice involved.	○	Tit. 75, §§1547(h) and 1547(e) provide for the introduction of supplemental test results into evidence. The provision of the section granting driver right to have supplemental test (breathalyzer) does not require the police officer to inform driver of the right. <i>Herring v. Com.</i> , 413 A. 2d 1171 (Cmwlth. 1980).
Rhode Island	●	Although R.I. Gen. Laws Ann. §31-27-2.1(a) implies consent to a chemical test of breath, blood, and/or urine administered "at the direction of a law enforcement officer," the statute is ambiguous as to who designates which test will be given. A person can refuse a blood test on valid religious ground; however, he/she then must submit to a BAC test of either breath or urine, or face license suspension.	○	§31-27-2.1(a) and §31-27-3 assures right to supplemental test. Also, §31-27-2.1(c)4 provides for the introduction of other competent evidence.
South Carolina	●	Only breath test is provided for under S.C. Code §56-5-2950(a). But persons refusing breath test may be entitled to reasonable opportunity to obtain a blood test. <i>State v. Lewis</i> , 266 S.C. 45, 221 S.E. 2d 524 (1976).	○	Defendant can have additional tests administered by his own physician, etc., under §56-5-2950(a). Moreover, the police officer must assist the defendant in contacting a qualified person to administer the test. However, such assistance is given only to a person whose breath was previously tested by a law enforcement officer. <i>State v. Lewis</i> , 266 S.C. 45, 221 S.E. 2d 524 (1976).
South Dakota	●	Officer chooses the type of test administered, not the motorist, <i>State v. Birney</i> , 85 S.D. 1, 176 N.W. 2d 475 (1970). Under implied consent statute, S.D. Comp. Laws Ann. §32-23-10, motorist may be required to submit to only one of several chemical tests mentioned in act, but may not choose which test to take. <i>Stensland v. Smith</i> , 79 S.D. 651, 116 N.W. 2d 653 (1962).	○	S.D. Comp. Laws Ann. §32-23-15. The obligation to pay for supplemental tests rests with the requesting party (defendant). <i>Holland v. Parker</i> , 84 S.D. 691, 176 N.W. 2d 54 (1970). Thus, it is not a denial of this right where the requesting party does not have the ability to pay. <i>State v. Birney</i> 85 S.D. 1, 176 N.W. 2d 475 (1970).
Tennessee	●	Tenn. Code Ann. §55-10-406 implies consent to a BAC test but fails to specify whether a choice of tests exists or who makes the choice.	○	§55-10-410(e) provides for supplemental tests at defendant's expense. However, the test is to be performed at a place certified for testing. No statutory right exists under subsection (e) of this section to be advised of privilege of obtaining a sample of blood for supplemental (independent) test. <i>There is no error if an officer does not inform the defendant of that privilege. State v. McKinney</i> , 605 S.W. 2d 842 (Tenn. Crim. App. 1980).
Texas	○	Tex. Rev. Civ. Stat. Ann. art 6701 I-5, §1 states that any person arrested may consent to any other type of chemical test or tests besides a breath test.	○	Art. 6701 I-5 §3(d). Test has to be within 2 hours of the arrest. Police officer's refusal to allow such additional or supplemental test is admissible under §3(f).

CHART 5 / BAC Tests: Defendant's Options—Continued

State	Choice of Tests	Citation/Comment	Supplemental Test	Citation/Comment
Utah	●	Utah Code Ann. §41-6-44.10(a). Defendant has no right to select such tests. A peace officer specifies tests. Utah's implied consent law requires that a person arrested for DUI give consent to a breathalyzer test and the law does not recognize the privilege of imposing any conditions as a prerequisite, according to <i>Moran v. Shaw</i> , 580 P. 2d 241 (Utah 1978).	○	§41-6-44.10(f) provides for supplementary test at driver's own expense.
Vermont	●	The implied consent statute specifies the tests to be given. It implies consent to a breath test or, if a breath sample cannot be taken or the equipment is unavailable, then to a blood test. The officer apparently makes the decision that a breath test is impossible and that the alternative blood test must be given. But this "election" is possible only upon the grounds specified in the law. An officer requesting a test must inform the offender which of the tests presented by statute are reasonably available to him. <i>State v. Pinard</i> , 130 Vt. 41, 285 A. 2d 774 (1971).	○	Tit. 23, §1202(c) authorizes supplemental test of blood; §1203(a) enables the defendant to send "sample" for independent analysis by laboratory of his choice.
Virginia	○	Va. Code Ann. §18.2-268(b) specifically states that the defendant has to elect to have either the breath or the blood test. However, it shall not be a matter of defense that either test is not available.	○	§18.2-268(d1) permits the accused to have the second vial of blood drawn sent to an independent laboratory for analysis.
Washington	●	Wash. Rev. Code Ann. §46.20.308(1) states that unless the defendant is unconscious, the test is only of breath — provided the individual is not under arrest for negligent homicide by an auto or under arrest for a DUI incident in which another person was injured and is likely to die. Under these circumstances, a blood or breath test may be given without consent.	○	§46.61.506(5). Right to an additional test (performed by a person of own choosing) is available to a defendant only after submitting or refusing to submit to a chemical breath test. <i>Greenwood v. Dept. of Motor Vehicles</i> , 13 Wa. 624, 536 P. 2d 644 (1975). Also, §46.20.308(1). In <i>State v. Turpin</i> , 94 Wa. 2d 820, 620 P. 2d 990 (1980), the court held that the taking of blood from an individual charged with negligent homicide without informing her of the right to seek alternative testing violated her statutory rights.
West Virginia	●	Under W.Va. Code Ann. §17C-5-4 (S.B.711-S, Laws 1981), the law enforcement agency determines whether a blood, breath, or urine test is used. Under §17C-5-9, defendant has a right to demand that a sample of breath, blood, or urine be taken for BAC test.	○	§17C-5-6 provides for supplemental test at one's "own expense".

CHART 5 / BAC Tests: Defendant's Options—Continued

State	Choice of Tests	Citation/Comment	Supplemental Test	Citation/Comment
Wisconsin	●	Wis. Stat. Ann. §343.305(1) leaves the choice of designating the tests to the officer. A motorist's refusal to take a breath test because (s)he considered it to be unreliable (even though based on his or her experience relating to its unreliability) was not regarded as a reasonable refusal. <i>Matter of Bardwell</i> , 266 N.W. 2d 618 (Wis. 1978).	○	§343.305(5) permits additional tests at the request of any driver involved in an accident resulting in great bodily harm or death to any person, or for a person arrested for DUI.
Wyoming	○	Wyo. Stat. Ann. §31-6-102. The person arrested can choose between blood, breath, or urine tests and whether to have a test administered by the nearest hospital or clinic at his own expense or undergo the test at the direction of the arresting officer at the expense of the arresting agency. §31-6-105(c). The law does not require that every person arrested be given the BAC test. <i>Harmer v. Town of Jackson</i> , 524 P. 2d 884 (1974). Persons afflicted with hemophilia and users of anticoagulants for heart conditions, who submit proof, are exempted from blood tests. §31-6-104(c), (d).	○	§31-6-105(d), provides that a person tested may have supplemental tests performed.
Washington, D.C.	○	D.C. Code Ann. §40-502. Defendant can elect any two tests (from blood, breath, or urine) as provided. However, whenever unreasonable delay arises out of a particular election (e.g., blood test), the officer elects the tests to be administered. Defendant can oppose such test only on valid religious or medical grounds.	○	§40-503 assures that person tested may have supplemental tests made.
Puerto Rico	○	P.R. Laws Ann. tit. 9, §1043(a) states "... the person required shall submit himself to the analysis of his choice;" however, §1043(b) states "Any peace officer shall require any driver to submit himself to any one of the said chemical analyses..." after arrest or detention. <i>People v. Ortega Otero</i> , 76 P.R. 465 (1969) held that the defendant is entitled to choose between blood, breath, or other bodily substance analysis.	○	Tit. 9, §1043(f). Portions of the blood samples collected by officials are made available to the defendant for supplemental analysis by a chemist of defendant's choice.
Virgin Islands	●	Such choice does not seem to be authorized.	○	Supplemental test is not specifically provided for. However, in <i>Government of the Virgin Islands v. Moses</i> , 12 V.I. 590, (D.C.V.I. 1976), the court asserted that government has a positive duty of preserving and making available (blood) specimen to the defendant driver for independent (supplemental) test under tit. 20, §493.

VI

BAC Levels As Evidence In State Courts

Map 2 and chart 6 reflect the evidentiary weight given by the several States to the percentage of alcohol found in the blood. The standards for interpreting the results of the chemical analysis of blood, urine, breath, or other bodily substances are provided by statute. Almost invariably, each of the 53 jurisdictions studied provide [in conformity with UVC §11-902.1 (b)(3)] that an alcohol/blood ratio of 0.10 percent or more will create at least a presumption that the person was under the influence of alcohol. Idaho and Utah regard even a 0.08 percent BAC level as presumptive of intoxication. Maryland defines a 0.08 percent BAC level as *prima facie* evidence of DUI while a 0.13 percent BAC level is taken as *prima facie* evidence of intoxication. The State of Mississippi recently eliminated a similar two-tiered approach and now simply accepts a 0.10 percent BAC count as giving rise to a presumption of intoxication. Other States, like Michigan, New York, and Maine use even lower BAC percentages (0.05 to less than 0.10 percent) as evidence of such impairment to operate a motor vehicle.

Alabama, Alaska, California, Connecticut, Iowa, Delaware, Florida, Illinois, Maine, Minnesota, Missouri, Nebraska, New York, North Carolina, Oregon, South Dakota, Utah, Vermont, Washington, and Wisconsin regard a 0.10 percent blood alcohol ratio as illegal *per se*. Connecticut declares a 0.10 percent level illegal *per se* only for second or subsequent offenders.

Briefly, the illegal *per se* law establishes as a traffic offense the operation of a motor vehicle with a blood alcohol concentration (BAC) equal to or in excess of a specified level—typically 0.10 percent weight by volume. The illegal *per se* law represents a significant improvement over the traditional DUI law in several respects. First, it raises the legal significance given to a BAC of 0.10 percent or more from *presumptive* evidence of intoxication to *conclusive* evidence of intoxication. Second, some of the more subjective (and more refutable) aspects of establishing the offense of DUI (e.g., behavioral tests, slurred speech) are eliminated as evidentiary indicators of guilt or innocence. As a result, the illegal *per se* level is the sole criterion for determining legal intoxication.

The adoption of illegal *per se* laws has been made possible in recent years by two factors: (1) the increased scientific/research support for the BAC test as an objective measurement of impairment of the ability to drive; and (2) the rapid improvement in breath alcohol measurement technology and chemical testing programs.

Recognizing blood alcohol content as a valid measure of impairment not only benefits and improves prosecution of drunk drivers through *per se* laws, but also guarantees the defendant an objective criterion for establishing guilt or innocence. The development of accurate breath alcohol measurement devices has enabled enforcement

agencies to gather this critical BAC evidence in a rapid and efficient manner at the police station or at the roadside.

The *per se* law is not intended to completely supplant existing DUI laws. Police agencies and the courts can and do apprehend and convict drivers with less than a 0.10 percent BAC level. Many drivers in the 0.05 to 0.10 percent BAC range are significantly impaired and can be charged under traditional DUI laws where *per se* laws would be inapplicable. By the same token, whenever chemical test results are not obtained or when the results are in doubt, prosecution may be made under the traditional DUI laws.

Per se laws, viewed both as an improvement and complement to the driving while intoxicated statute, nevertheless attract close judicial scrutiny because they permit no rebuttal by the defendant.¹ Nonetheless, most courts accept the *per se* provision as constitutional.² Map 2 graphically depicts the evidentiary value of the different percentage levels of the BAC.

¹In *People v. LaPlante*, 81 Misc. 2d 34, 365 N.Y.S. 2d 392 (1975), the Justice Court of Tonawanda, for example, found the New York *per se* law to be "unconstitutionally vague, since there was no definable difference between that offense and the lesser offense of driving while impaired." However, that decision has been widely criticized and since it is a justice court decision it has only limited authority.

²See *Cox v. State*, 281 A. 2d 606 (1971), and *Greaves v. State*, 528 P. 2d 805 (1974).

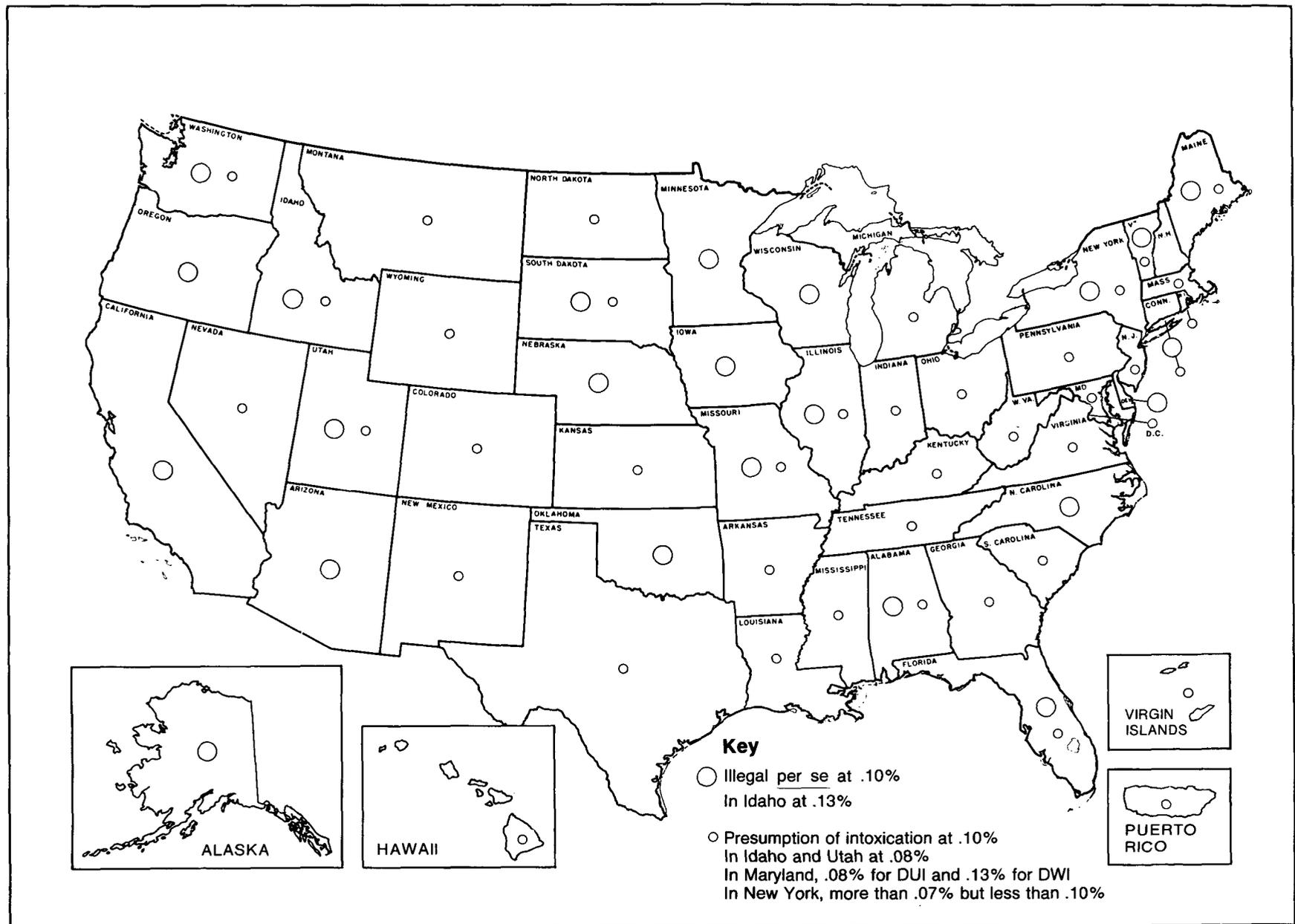
MAP 2 / Illegal Per Se and Presumptive BAC Laws


CHART 6 / BAC Levels as Evidence in State Courts

State	Presumption at 0.10%	Citation/Comment	Illegal per se at 0.10%	Citation/Comment
Alabama	O	Ala. Code §32-5A-194(b)(3).	O	Alabama considers §32-5A-191(a)(1) to be an illegal <i>per se</i> law because it prohibits driving while there is 0.10% or more alcohol in the blood. However, §32-5A-194 states that 0.10% BAC creates a rebuttable presumption that the driver was under the influence. Since §32-5A-191(a)(1) was enacted after §32-5A-194 it would supercede any inconsistent provision of §32-5A-194.
Alaska			O	Alaska Stat. §28.35.030(a)(2) states that a person commits the crime of driving while intoxicated if he drives a motor vehicle when there is 0.10 percent by weight of alcohol in his blood.
Arizona	O	Ariz. Rev. Stat. Ann. §28.692(b)(3).		
Arkansas	O	Ark. Stat. Ann. §75-1031.1(3).		
California			O	A.B. 541 (Cal. Laws 1981).
Colorado	O	Colo. Rev. Stat. Ann. §42-4-1202(2)(c).		
Connecticut	O	Conn. Gen. Stat. Ann. §14-227a(c)(3) makes such amount <i>prima facie</i> evidence that the defendant was under the influence of intoxicating liquor.		§14-227a(g)(P.A. 446, Laws 1981) declares 0.10% BAC level illegal <i>per se</i> only for second or subsequent offenders.
Delaware			O	Del. Code Ann. tit. 21, §4177(b). Test samples can be withdrawn within 4 hours of the alleged offense.
Florida	O	Fla. Stat. Ann. §322.262(2)(c) regards such percentage as <i>prima facie</i> evidence of impairment of faculties. "Moreover, such person who has a blood alcohol level of 0.10% or above shall be guilty of driving . . . with an unlawful blood alcohol level."	O	§§316.193 and 322.262(2)(c). Constitutionality upheld in <i>State v. Hamza</i> , 342 So. 2d 80 (Fla. 1977); <i>Roberts v. State</i> , 329 So. 2d 296 (Fla. 1976).
Georgia	O	Ga. Code Ann. §68A-902.1(b)(3).		
Hawaii	O	Hawaii Rev. Stat. §291.5(3).		
Idaho	O	Idaho Code Ann. §49-1102(b)(1) presumes intoxication at more than 0.08%. §49-1102(b)(2).		
Illinois	O	Ill. Ann. Stat. Ch. 95 1/2, §11-501.2 (Act 82-311, Laws 1981).	O	Ill. Ann. Stat. Ch. 95 1/2, §11-501(a)(1) (Act 82-311, Laws 1981).
Indiana	O	Ind. Stat. Ann. §9-4-1-54(g)(1,2) (P.L. 122, §1, Laws 1981). Intoxication is presumed at 0.10% or more BAC. Evidence of BAC level between 0.05% and 0.10% is relevant evidence on the issue of intoxication.		

CHART 6 / BAC Levels as Evidence in State Courts—Continued

State	Presumption at 0.10%	Citation/Comment	Illegal per se at 0.10%	Citation/Comment
Iowa	O	S.B. 514 (Laws 1981) presumes intoxication at the 0.10% level.	O	S.B. 514 (Laws 1981) makes driving with 0.13% BAC illegal <i>per se</i> .
Kansas	O	Kan. Stat. Ann. §8-1005.		
Kentucky	O	Ky. Rev. Stat. Ann. §189.520(4)(C).		
Louisiana	O	La. Rev. Stat. Ann. §32:662(A)(1)(C).		
Maine	O	Me. Rev. Stat. Ann. tit. 29, §1312(5)(c) makes 0.10% BAC <i>prima facie</i> evidence of intoxication in proceedings other than those arising under §§1312-B or 1312-C.	O	Me. Rev. Stat. Ann. tit. 29, §1312-B makes it a criminal violation to drive while having 0.10% or more by weight of alcohol in the blood; however §1312-C authorizes the State's attorney to charge such violators, in the alternative, with a traffic infraction for the same BAC level.
Maryland	O	Md. Cts. and Jud. Proc. Code Ann. §10-307 states that 0.08% is taken as <i>prima facie</i> evidence of DUI, while 0.13% is taken as <i>prima facie</i> evidence of intoxication.		
Massachusetts	O	Mass. Gen. Laws Ann. Ch. 90, §24(1)(e).		
Michigan	O	Mich. Stat. Ann. §9.2325(1)(c). Presumption that the defendant was under the influence of intoxicating liquor. Excess of 0.07% but less than 0.10% provides presumption of impairment, §9.2325(1)(b).		
Minnesota			O	Minn. Stat. Ann. §169.121 (1)(d); §169.123 (5a).
Mississippi	O	Under Miss. Code Ann. §63-11-39 (Ch. 491, Laws 1981).		
Missouri	O	Mo. Ann. Stat. §577.030 states that 0.10% or more is <i>prima facie</i> evidence of intoxication.	O	But, §577.012 states that a person shall not drive a motor vehicle when he has 0.10% or more by weight of alcohol in his or her blood.
Montana	O	Mont. Rev. Codes Ann. §61-8-401(3)(c).		
Nebraska			O	Neb. Rev. Stat. §39-669-07.
Nevada	O	Nev. Rev. Stat. §484.381.1(c).		
New Hampshire	O	N.H. Rev. Stat. Ann. §262-A:63 [re-codified effective 1/82 as §265.89 (Ch. 146, Laws 1981)] states that such percentage is <i>prima facie</i> evidence of intoxication.		Illegal <i>per se</i> provision deleted effective 1/82 by Ch. 146, Laws 1981.
New Jersey	O	N.J. Stat. Ann. §39:4-50.1(3).		
New Mexico	O	N.M. Stat. Ann. ch. 66-8-110(B)(3).		

CHART 6 / BAC Levels as Evidence in State Courts—Continued

State	Presumption at 0.10%	Citation/Comment	Illegal per se at 0.10%	Citation/Comment
New York	O	N.Y. Veh. and Traf. Law. §1195(c) regards more than 0.07% but less than 0.10% BAC level as <i>prima facie</i> evidence of impairment.	O	§1192.2.
North Carolina			O	N.C. Gen. Stat. §20-138(b) and §20-17(2).
North Dakota	O	N.D. Cent. Code §39-20-07(3).		
Ohio	O	Ohio Rev. Code Ann. §4511.19(B).		
Oklahoma	O	Okla. Stat. Ann. tit. 47, §756(c).		
Oregon			O	Ore. Rev. Stat. §487.540(1)(a); §487.545(2).
Pennsylvania	O	Pa. Stat. Ann. tit. 75, §1547(d)(3).		
Rhode Island	O	R.I. Gen. Laws Ann. §31-27-2.1(c)(3).		
South Carolina	O	S.C. Code Ann. §56-5-2950(b)(3).		
South Dakota	O	S.D. Code §32-23-7(3).	O	§32-23-1(1) forbids a person with 0.10% or more BAC level from driving or being in physical control of any vehicle.
Tennessee	O	Tenn. Code Ann. §55-10-408(b).		
Texas	O	Tex. Rev. Civ. Stat. Ann. art. 6701 I-5, §3(a).		
Utah	O	Utah Code Ann. §41-6-44(b)3. Presumption of intoxication is at 0.08%.	O	§§41-6-44(a) and 41-6-43(a).
Vermont	O	Vt. Stat. Ann. tit. 23, §1204(a)(3) (Act 103, Laws 1981).	O	Tit. 23, §1201(a)(1) (Act 103, Laws 1981).
Virginia	O	Va. Code Ann. §18.2-269(3).		
Washington	O	Wash. Rev. Code Ann. §46.61.506(1).	O	§46.61.502(1).
West Virginia	O	W.Va. Code Ann. §17C-5-8(c). 0.10% is admissible as <i>prima facie</i> evidence of intoxication.		
Wisconsin			O	Wis. Stat. Ann. §346.63.
Wyoming	O	Wyo. Stat. Ann. §31-5-233(b)(iii).		

CHART 6 / BAC Levels as Evidence in State Courts—Continued

State	Presumption at 0.10%	Citation/Comment	Illegal per se at 0.10%	Citation/Comment
Washington, D.C.	O	D.C. Code Ann. §40-717(3). 0.10% constitutes <i>prima facie</i> proof of intoxication. While the Implied Consent Act authorizes performance of two types of BAC tests on operators of motor vehicles who are "either arrested and believed to be DUI, or who are involved in accidents resulting in death or personal injury, it does not mandate proof of both tests at trial." <i>Murray v. United States</i> , 358 A. 2d 314 (D.C. App. 1976.).		
Puerto Rico	O	P.R. Laws Ann. tit. 9, §1041(b)(2). Presumption has been lowered to 0.10% since July 1, 1975.		
Virgin Islands	O	V.I. Code Ann. tit. 20, §493(d). 0.10% is admissible as <i>prima facie</i> evidence that the person was in an intoxicated condition.		

VII

Driver Screening, Rehabilitation, and Sanctions

Chart 7 examines State provisions regarding driver screening and the post-conviction phase of punishment and rehabilitation. Many of the more recent changes in this area of State law were the result of NHTSA's Alcohol Safety Action Projects (ASAP).

Alcohol and drug abuse treatment and education programs for DUI offenders have been increasingly emphasized in the States as alternatives to traditional and sometimes ineffective punitive sanctions. Moreover, a growing feeling that alcoholism and drug addiction should be treated more as illnesses than crimes has resulted in a stronger State emphasis on rehabilitation. However, this emphasis on retraining and rehabilitation has not resulted in the elimination of existing punitive laws; the traditional penalties of fines and license suspension continue to apply in many States. Rather, rehabilitation is more frequently used as an alternative sanction for first offenders and supplemental treatment—in addition to penalties—is used more frequently for second and subsequent offenders.

Alabama, Alaska, Arkansas, Cali-

fornia, Colorado, Connecticut, Indiana, Massachusetts, Minnesota, New Mexico, Pennsylvania, and Puerto Rico clearly require presentence reports following convictions for DUI offenses. Presentence reports make it possible for the judge to consider the background of the convicted defendant, including prior behavior and mental and physical conditions, prior to imposing sentence. Many other States have enacted criminal procedure provisions which require a court to order a presentence report whenever a defendant has been convicted of a felony. Presentence reports are generally optional in misdemeanor cases. These laws are part of the State criminal codes and apply to all felony or misdemeanor cases, whether DUI-related or not. States listed above address the issue in their traffic codes and expressly require reports in DUI cases. In those States which do not include the requirement in their traffic code, it appears that a presentence report would in most cases be optional, since few DUI-related offenses are classified as felonies. As a rule, a simple DUI offense is treated as an infraction

or misdemeanor. Subsequent offenses, and offenses that result in injury or death, may be treated by some States as felonies and would be more likely to generate presentence reports.

States resort to a series of disincentives or punishments to discourage drunken driving. License revocation or suspension is required in certain cases in almost every jurisdiction. A few jurisdictions require revocation or suspension upon the first conviction for driving under the influence, while the greater number make it mandatory upon second or subsequent convictions. License revocation or suspension often is coupled with either financial penalties or imprisonment for DUI offenses. States vary on the issue of mandatory incarceration. Alaska, Arizona, California, Maine, Ohio, Washington, and West Virginia provide for mandatory incarceration upon the first conviction. Maine requires incarceration only if the offender is charged with a criminal offense. In California, if the court grants probation, the first offender must complete driver training or alcohol rehabilitation in lieu of incarceration. All States man-

date incarceration for repeat offenders, with a proviso for special consideration to an offender who undergoes rehabilitation and retraining.

A majority of States provide for hardship or limited licenses. These limited licenses are issued primarily on the basis of economic necessity under circumstances where a person's livelihood may be jeopardized if barred from driving alto-

gether. Frequently, States require persons granted restricted licenses to attend driver retraining schools. Because some State authorities have been sought as defendants in cases involving the allegedly negligent issuance or reissuance of a driver's license to a DUI offender, they have become increasingly concerned about liability issues and are making attendance at retraining or rehabilitation centers a pre-

condition to any limited license or probation.¹

¹Minnesota, for example, requires evidence not only of the completion of such rehabilitative treatment, but also of a reasonable period of sobriety thereafter. In Nebraska, such imposition of specific conditions aimed at drunken driver retraining and rehabilitation prior to any reissuance of driving privileges was upheld in *State v. Muggins*, 192 Neb. 415, 222 N.W. 2d 289 (1974).

CHART 7 / Driver Screening, Rehabilitation, and Sanctions

State	DUI: Mandatory Revocation or Suspension	DUI: Limited License After Conviction	DUI: Mandatory Imprisonment	DUI: Mandatory Pre-sentence Report	DUI: Retraining Offenders	DUI: Rehabilitating Offenders	Citation/Comment
Alabama	O ¹		● ²	O ³	O ³	O ³	<p>¹Ala. Code §32-5A-195(j)(2), (3) mandates revocation upon first violation "only when ordered by the court rendering the conviction." Revocation is mandatory on second or subsequent conviction. Due process constraints apply. <i>Smith v. McGiff</i>, 434 F. Supp. 673 (M.D. Ala. 1976).</p> <p>²Optional on second or subsequent conviction. §32-5A-191.</p> <p>³§32-5A-191(c). Has a statewide DUI court referral program; judge is given authority to determine whether a DWI offender should be subjected to retraining and rehabilitation.</p>
Alaska	O ¹	O ²	O ³	O ⁴	O ⁴	O ⁴	<p>¹Alaska Stat. §28.15.181(a)(5); §28.15.181(b).</p> <p>²§§28.15.181(b) and 2.15.201.</p> <p>³Upon first conviction, minimum sentence is 3 days. Upon second conviction within 5 years of first conviction and upon subsequent convictions, minimum sentence is 10 days. §28.35.030(a). No suspension or parole is permitted until minimum sentence has been served.</p> <p>⁴§28.35.030(d); §28.15.231(a); §28.15.241(b). Statewide presentence reporting and driver improvement program. DMV identifies "problem drivers" on the basis of point accumulation and recommends retraining.</p>
Arizona	O ¹	● ²	O ³	● ⁴	O ⁵	O ⁵	<p>¹Ariz. Rev. Stat. Ann. §28-692.01(A) and (B). Optional for the initial offense; mandatory upon second and subsequent offenses.</p> <p>²May be possible under §28-692.01(C), which authorizes court to permit jailed defendants to continue employment on a work release program.</p> <p>³§28-692.01(A) and (B). Not eligible for parole, probation, etc., until at least 1 day served for first offense and 60 days for second or subsequent offense.</p>

CHART 7 / Driver Screening, Rehabilitation, and Sanctions—Continued

State	DUI: Mandatory Revocation or Suspension	DUI: Limited License After Conviction	DUI: Mandatory Imprisonment	DUI: Mandatory Presentence Report	DUI: Retraining Offenders	DUI: Rehabilitating Offenders	Citation/Comment
Arizona—Continued							<p>⁴Rule 26.4, Rules of Criminal Procedure, require presentence reports only in criminal cases where the discretionary penalty includes imprisonment for 1 year or more.</p> <p>⁵Court may require treatment. §28-692.01(A) and (B). Treatment programs for persons impaired by alcoholism/habitual drug users are authorized by §36-2023 et seq.</p>
Arkansas	O ¹	O ²	O ³	O ⁴	O ⁴	O ⁴	<p>¹Ark. Stat. Ann. §75-1029.4(1).</p> <p>²§75-1029.4(1)(a).</p> <p>³§75-1029 mandates 1 day sentence for first offenders and up to 1 year for subsequent offenders. According to state officials first offenders are not usually incarcerated, however.</p> <p>⁴§75-1029.4(2). Presentence investigation determines whether a DWI offender should be referred to an agency designated in Arkansas Comprehensive DWI Plan for professional assistance in retraining and rehabilitation. Drivers will be assessed retraining and rehabilitation costs.</p>
California	O ¹	O ²	O ³	O ⁴	O ⁵	O ⁵	<p>¹Cal. Veh. Code §23102.3.</p> <p>²§13210.</p> <p>³§23102. If the court grants probation, completion of driver training or rehabilitation is required.</p> <p>⁴§23102; §23105.</p> <p>⁵§23102.1; see also Cal. Health and Saf. Code §11837; Cal. Veh. Code §§11838 and 13352.5.</p>
Colorado	O ¹		O ²	O ³	O ⁴	O ⁴	<p>¹Colo. Rev. Stat. Ann. §42-4-1202(4)(a). See also §42-2-201 (Habitual offenders.)</p> <p>²Upon second and subsequent convictions. §42-5-1202(4)(a). Also possible (optional) under §42-5-1202(4)(b) for driving while impaired by alcohol.</p> <p>³§42-4-1202(5) creates alcohol and drug driving safety programs in each district to provide presentence evaluations and supervision of persons in education or treatment programs.</p>

CHART 7 / Driver Screening, Rehabilitation, and Sanctions—Continued

State	DUI: Mandatory Revocation or Suspension	DUI: Limited License After Conviction	DUI: Mandatory Imprisonment	DUI: Mandatory Presentence Report	DUI: Retraining Offenders	DUI: Rehabilitating Offenders	Citation/Comment
Colorado—Continued							⁴ Provided under §24-1-301 et seq., subject to §25-1-316. Satisfactory completion of alcohol treatment courses approved by Division of Highway Safety enables DWI offender to apply for probationary license. Counties run programs in cooperation with statewide Alcohol Driving Countermeasure staff.
Connecticut	●		O ¹	O ²	O ³	O ³	¹ Conn. Gen. Stat. Ann. §14-227a(e). Second and subsequent offense. 1981 legislation permits waiver of mandatory minimum sentence if offender participates in alcohol education and treatment program (P.A. 81-446). ² Public Act 446, §1(b) (Laws 1981). ³ Possible under §17.155k et. seq. Court records DWI convictions and DMV is informed. First offenders can take special driver improvement courses, while critical alcoholic cases are offered a number of rehabilitation treatment programs. Also see: Pub. Act 446 (Laws 1981), establishing a pre-trial alcohol education and treatment system.
Delaware	O ¹	O ²	O ³	● ⁴	O ⁵	O ⁶	¹ Del. Code tit. 21, §4177 B. ² Possible under tit. 21, §2743. ³ Upon second and subsequent offenses. Tit. 21, §4177(d)(2). ⁴ Presentence report permissible at discretion of court whenever a defendant is convicted of any crime. Tit. 11, §4431. ⁵ Tit. 21, §4177D. ⁶ Tit. 21, §4177D. Statewide course for retraining and programs of rehabilitation for persons convicted of DWI have been formulated. Enrollment in course of instruction and/or program of rehabilitation enables application for conditional license.

CHART 7 / Driver Screening, Rehabilitation, and Sanctions—Continued

State	DUI: Mandatory Revocation or Suspension	DUI: Limited License After Conviction	DUI: Mandatory Imprisonment	DUI: Mandatory Pre-sentence Report	DUI: Retraining Offenders	DUI: Rehabilitating Offenders	Citation/Comment
Florida	O ¹	O ²	O ³	●	O ⁴	O ⁴	<p>¹Fla. Stat. Ann. §322.26; §322.28(2)(a).</p> <p>²§322.28(2)(a).</p> <p>³Upon second and subsequent convictions. §§316.193(2)b and 316.193 (4)(b), (c).</p> <p>⁴§§316.193(5) and 322.291. Statewide mandatory retraining school attendance for DWI offenders exists. State maintains comprehensive rehabilitation programs for alcoholics including multiple DWI offenders.</p>
Georgia	O ¹	O ²	O ³	● ⁴	O ⁵	⊗ ⁶	<p>¹Ga. Code Ann. §68B-305 requires mandatory suspension for driving under the influence (as defined in §68A-902).</p> <p>²§68B-311.</p> <p>³Upon second and subsequent convictions. §68A-902(c).</p> <p>⁴Mandatory only in felony cases. §27-2503.</p> <p>⁵§27-2506. Privilege denied to habitual offenders. Court may require nonhabitual DWI offender to attend and satisfactorily complete a driver improvement program.</p> <p>⁶Possible, subject to §99-3919, under §§99-3909 to 99-3913 governing treatment of alcoholics.</p>
Hawaii	⊗ ¹		● ²	⊗ ³	O ⁴		<p>¹Haw. Rev. Stat. §286-128 mandates license suspension after accumulation of 12 points in one 12 month period. Each DUI conviction results in 4-8 points, indicating that subsequent convictions could result in mandatory suspension.</p> <p>²Hawaii Rev. Stat. §291-4; §291-7. Prison or fine or both at the option of court.</p> <p>³Can be presumed under §§286-153, 291-5, 286-144, 286-156.</p> <p>⁴§286G-1, 2, 3; §706-620. Court in its discretion may withhold sentence of imprisonment and send DWI offender to counseling and retraining.</p>

CHART 7 / Driver Screening, Rehabilitation, and Sanctions—Continued

State	DUI: Mandatory Revocation or Suspension	DUI: Limited License After Conviction	DUI: Mandatory Imprisonment	DUI: Mandatory Presentence Report	DUI: Retraining Offenders	DUI: Rehabilitating Offenders	Citation/Comment
Idaho	O ¹		O ²	● ³	O ⁴	O ⁴	<p>¹Idaho Code §49-1102(c). Mandatory suspension with increasing severity for repeaters.</p> <p>²§49-1102(e). Upon second and subsequent convictions.</p> <p>³Mandatory only in felony cases. §20-220.</p> <p>⁴§§49-356, 49-357. A DWI offender may be referred for participation in retraining and/or rehabilitation programs by a driver improvement counselor, a judge, a district court magistrate, or the hearing officer of the Department of Law Enforcement.</p>
Illinois	O ¹	O ²	● ³	● ⁴	O ⁵	O ⁵	<p>¹Ill. Ann. State. ch. 95 1/2, §§11-501(c) (P.A. 82-311, Laws 1981) and 6-205(a)2.</p> <p>²Ch. 95 1/2, §§6-205(a)(10) and (c).</p> <p>³Ch. 95 1/2, §11-501(c) defines DUI as a class A misdemeanor. Court may impose sentence up to 1 year imprisonment or may impose fine or suspend sentence.</p> <p>⁴Ch. 38, §1005-3-1. Presentence report mandatory for felonies; optional for misdemeanors.</p> <p>⁵Secretary of State may, as a condition of issuing a restricted driving permit, require the applicant to participate in a designated driver remedial or rehabilitative program. Ch. 95 1/2, §6-205(c) (P.A. 82-311, Laws 1981).</p>
Indiana	O ¹	O ²	O ³	O ⁴	O ⁵	O ⁵	<p>¹Ind. Stat. Ann. §9-4-1-54(c). Court shall recommend the suspension of the current driving license. . . ."</p> <p>²§9-4-1-54(c). Court may put the first offender on probation with limited license.</p> <p>³§9-4-1-54. Mandatory sentence for second and subsequent convictions.</p> <p>⁴§9-4-1-130.</p>

CHART 7 / Driver Screening, Rehabilitation, and Sanctions—Continued

State	DUI: Mandatory Revocation or Suspension	DUI: Limited License After Conviction	DUI: Mandatory Imprisonment	DUI: Mandatory Pre-sentence Report	DUI: Retraining Offenders	DUI: Rehabilitating Offenders	Citation/Comment
Indiana—Continued							<p>⁵§16-13-6.1-15.1; §16-13-6.1-19. Judge can take judicial notice of the fact of alcoholism or addiction and refer the offender to retraining and rehabilitation. Such referral may be in lieu of or in supplement to regular penalty.</p>
Iowa	O ¹	O ²	O ³	● ⁴	O ⁵	O ⁵	<p>¹Iowa Code Ann. §321.281.</p> <p>²§321.283(6).</p> <p>³§321.281. Incarceration mandatory upon first offense; upon second or subsequent offense court may require rehabilitation in lieu of jail.</p> <p>⁴Optional in serious misdemeanor cases. §901.2.</p> <p>⁵§§321.281 and 321.283. Courts are empowered to commit a repeat DUI offender either for treatment (rehabilitation) or for retraining. The commitment may be either in lieu of or prior to or after the prescribed punishments. Offender pays for retraining or rehabilitation courses. Persons unable to pay are treated as State patient.</p>
Kansas	O ¹	O ¹	O ²	O ³		O ⁴	<p>¹Kan. Stat. Ann. §§8-1567(d) and (e). Judge must either revoke license or issue restricted license.</p> <p>²§8-1567(c). Mandatory upon second or subsequent conviction; optional upon first conviction.</p> <p>³Optional in misdemeanor cases; mandatory in felony cases. §21-4604.</p> <p>⁴§§41-1126, 65-4007 et seq. In addition to the comprehensive alcoholism and intoxication treatment organized by the Department of Public Health, community-run centers assist the rehabilitative needs of alcoholics.</p>
Kentucky	O ¹	O ²	O ³	● ⁴	O ⁵	O ⁵	<p>¹Ky. Rev. Stat. Ann. §186.560(1)(b). Mandatory revocation on a progressive scale for each offense. However, see 2, below.</p> <p>²§186.560(4). Possible as an alternative to revocation, if court so recommends in writing upon first offense and on the condition that driver attends retraining school.</p>

CHART 7 / Driver Screening, Rehabilitation, and Sanctions—Continued

State	DUI: Mandatory Revocation or Suspension	DUI: Limited License After Conviction	DUI: Mandatory Imprisonment	DUI: Mandatory Pre-sentence Report	DUI: Retraining Offenders	DUI: Rehabilitating Offenders	Citation/Comment
Kentucky—Continued							<p>³§189.990 (9) (a). Second and subsequent offenders.</p> <p>⁴Mandatory only in felony cases. §532.050.</p> <p>⁵§§186.560(4) and 186.574. The Department of Motor Vehicles may refer a DWI offender upon written recommendation of the court.</p> <p>⁶Alcoholic DWI offenders may presumably be referred to rehabilitation centers established under §222.1 et seq.</p>
Louisiana	O ¹	O ²	O ³	● ⁴	O ⁵	O ⁵	<p>¹La. Rev. Stat. Ann. §§32:414(A) and 32:414(B)(2). Unless otherwise directed by the court, the department must suspend the license for 60 days upon first offense. Revocation for a year is mandatory upon second and subsequent convictions.</p> <p>²§32:414(A). §32:415.1(A)(1). The Department of Motor Vehicles may, with court approval, issue a limited license (instead of suspension) on the basis of hardship, etc.</p> <p>³§14:98(C) et seq. Upon second and subsequent conviction. Not less than 125 days nor more than 6 months imprisonment.</p> <p>⁴Optional upon conviction of any crime. La. Code Crim. Proc. Art. 875.</p> <p>⁵§32-415.1(A)(2). Judges are given authority to refer first time offenders for retraining or rehabilitation. Restricted licenses are issued to facilitate attendance in driver improvement schools. Court grants such opportunity on the basis of a) medical evaluation and b) recommendation that the convicted DWI offender is pathologically addicted to alcohol or is a habitual drinker or an addict who will benefit from such treatment. §14:98(C) authorizes the court to order a DWI offender to undergo substance abuse treatment program in lieu of imprisonment.</p>

CHART 7 / Driver Screening, Rehabilitation, and Sanctions—Continued

State	DUI: Mandatory Revocation or Suspension	DUI: Limited License After Conviction	DUI: Mandatory Imprisonment	DUI: Mandatory Pre-sentence Report	DUI: Retraining Offenders	DUI: Rehabilitating Offenders	Citation/Comment
Maine	O ¹	O ²	O ³	●	O ⁴	O ⁴	<p>¹Me. Rev. Stat. Ann. tit. 29, §§1312-B(2)(C) and 1312-C(4).</p> <p>²Tit. 29, §1312-D(2). Secretary of State has discretion to do so.</p> <p>³Mandatory if prosecuted under tit. 29, §1312-B(2)(B). If State's Attorney elects to charge first offenders with an infraction instead of a criminal offense, no imprisonment mandated. (Tit. 29, §1312-C (1) and (2)).</p> <p>⁴Tit. 29, §1312-D(2). Successful completion of retraining and rehabilitation programs are mandatory for license reissuance. Department of Human Services regulates the programs and charges participants a nominal registration fee.</p>
Maryland	● ¹	O ²	● ³	● ⁴	O ⁵	O ⁵	<p>¹Md. Transp. Code Ann. §§16-205, 27-103. A license may be suspended or revoked under §16-205. A license may be suspended if the fine levied by the court is not paid. §27-103. Unless it would adversely affect employment, a person's license could be suspended or revoked for DWI under the point system. §16-404.</p> <p>²§16-113. To the extent not prohibited by §§16-208 and 16-404.</p> <p>³§27-101. Imprisonment is optional.</p> <p>⁴Mandatory upon conviction of felony or prior to commitment to Patuxent Institute. Art. 41, §124.</p> <p>⁵Md. Ann. Code Art. 2C, §310. The Division of Alcoholism, in collaboration with pertinent agencies, including the Court, the Police, and the Motor Vehicle Administration, is responsible for a comprehensive program for retraining and rehabilitation of DWI offenders. The program is integrated with the Community Health and Welfare Services. Minors may also be required to attend driver improvement program under §16-212. Art. 27, §639 also provides for education and rehabilitation of intoxicated drivers.</p>

CHART 7 / Driver Screening, Rehabilitation, and Sanctions—Continued

State	DUI: Mandatory Revocation or Suspension	DUI: Limited License After Conviction	DUI: Mandatory Imprisonment	DUI: Mandatory Pre-sentence Report	DUI: Re-training Offenders	DUI: Re-habilitating Offenders	Citation/Comment
Massachusetts	O ¹	O ²	● ³	O ⁴	O ⁵	O ⁵	<p>¹Mass. Gen. Laws Ann. ch. 90, §24(1)(b) and ch. 90, §22F mandate revocation. Habitual offenders are not issued license for 1 year.</p> <p>²Ch. 90, §22F.</p> <p>³Optional under ch. 90, §24(1)(a).</p> <p>⁴Ch. 90, §§24(1)(a) and 24D.</p> <p>⁵Statewide retraining and rehabilitation programs have been established. DWI offender consenting to undergo such a treatment may be assigned to a program at the discretion of the court. Probation staff of the court makes program assessment and evaluation to determine the efficacy of such committal. Ch. 90, §24D; Ch. 111B, §1.</p>
Michigan	O ¹	O ²	O ³	●	O ⁴	O ⁴	<p>¹Mich. Stat. Ann. §9.2325. Suspension only.</p> <p>²§§9.2023(3) and 9.2325.</p> <p>³§9.2325. Upon a third conviction within a period of 10 years.</p> <p>⁴§9.2325, §16.301, and §14.15 (6101) et seq. At the discretion of the court, a DWI offender may be assigned either to an alcohol training program or a program run by the Substance Abuse Services. Restricted license may be issued to an offender attending such program.</p>
Minnesota	O ¹	O ²	● ³	O ⁴	O ⁵	O ⁵	<p>¹Minn. Stat. Ann. §169.121(3).</p> <p>²§171.30; §§169.123(5a) and (9).</p> <p>³§169.121. Prison is optional for first and subsequent offenses.</p> <p>⁴§§169.124 to 169.126.</p> <p>⁵§§169.121(5), 169.123(10), and 169.124. An alcohol safety program is mandatory for counties over 10,000 people. Although optional, counties with lesser population also have such rehabilitation and retraining programs. A program assessment and evaluation (PSI) is mandatory.</p>

CHART 7 / Driver Screening, Rehabilitation, and Sanctions—Continued

State	DUI: Mandatory Revocation or Suspension	DUI: Limited License After Conviction	DUI: Mandatory Imprisonment	DUI: Mandatory Pre-sentence Report	DUI: Retraining Offenders	DUI: Rehabilitating Offenders	Citation/Comment
Mississippi	● ¹	○ ²	● ¹	●	○ ³	○ ³	<p>¹Miss. Code Ann. §63-11-30. Upon first conviction, fines and rehabilitation program attendance required. Upon second and third convictions, suspension and fines are mandatory and imprisonment is optional.</p> <p>²§63-11-30. Trial judge may impose limitations on license for first offenders.</p> <p>³§63-11-32. Statewide Mississippi Alcohol Safety Education Program (MASEP) provides for both retraining and rehabilitation.</p>
Missouri	○ ¹	○ ²	○ ³	● ⁴	○ ⁵	○ ⁵	<p>¹Mo. Rev. Stat. §302.304 requires suspension upon accumulating 8 points in 24 months. DUI earns 12 points as does the second or subsequent conviction of driving with 0.10% BAC level. First violation of the 0.10% rule results in 6 points.</p> <p>²§302.209(3).</p> <p>³§577.012(2). Upon second or subsequent convictions.</p> <p>⁴Presentence report or commitment possible in felony cases. §557.031.</p> <p>⁵§631.010 et seq. Both local and statewide alcohol and drug abuse centers are established by law. License revocation necessitates offender's undergoing a complete reexamination for reissuance, but statute does not require retraining prior to reexamination.</p>
Montana	○ ¹	○ ²	○ ³	● ⁴	○ ⁵	○ ⁵	<p>¹Mont. Code Ann. §61-5-205(2).</p> <p>²§61-5-206.</p> <p>³§61-8-714. Upon a third or subsequent conviction within a period of 5 years.</p> <p>⁴Mandatory upon conviction of crime for which sentence of 1 year imprisonment or more is possible. §46-18-111.</p> <p>⁵§61-8-714(2). Court has discretion to suspend a sentence on the condition that the defendant successfully complete a court approved retraining program or alcohol treatment program.</p>

CHART 7 / Driver Screening, Rehabilitation, and Sanctions—Continued

State	DUI: Mandatory Revocation or Suspension	DUI: Limited License After Conviction	DUI: Mandatory Imprisonment	DUI: Mandatory Presentence Report	DUI: Retraining Offenders	DUI: Rehabilitating Offenders	Citation/Comment
Nebraska	O ¹	O ²	● ³	● ⁴	O ⁵	O ⁵	<p>¹Neb. Rev. Stat. §§39-669.07 and 39-669.27.</p> <p>²§39-669.34. Court may grant an employment driving permit if the Department of Motor Vehicles revokes a license. But if the court revokes a license, no limited license is possible.</p> <p>³§39-669.07 does not provide for imprisonment.</p> <p>⁴Presentence report or commitment possible prior to imposing an indeterminate sentence. §83-1, 105.</p> <p>⁵§39-669.27(2) requires driver training of persons with 12 points or more in a 2 year period. §39-669.31 et seq. directs the Dept. of Motor Vehicles to establish a model statewide probation program for retraining and rehabilitation of DWI offenders. Program must generally comply with the ASAP program of NHTSA. Probation administrator is to examine and certify local (county or municipal) programs. DWI offenders may be granted probation on condition that they attend, complete, and pay for the alcohol abuse program.</p>
Nevada	O ¹	O ²	O ³	O ⁴	O ⁵	O ⁵	<p>¹Nev. Rev. Stat. §484.379(3).</p> <p>²§483.490(2); §484.379(6)(d) (Ch. 755, Laws 1981).</p> <p>³§484.379(4). For a second offense within a period of 5 years.</p> <p>⁴Mandatory upon any conviction, guilty pleas or <i>nolo contendere</i> plea. §176.135.</p> <p>⁵§§483.470 and 458.300. Attendance at traffic safety school can result in reduction of demerit points. An alcoholic charged with a crime (other than certain specified crimes) can elect civil commitment in an alcohol treatment center instead of prosecution. DWI is not one of the excluded crimes.</p>

CHART 7 / Driver Screening, Rehabilitation, and Sanctions—Continued

State	DUI: Mandatory Revocation or Suspension	DUI: Limited License After Conviction	DUI: Mandatory Imprisonment	DUI: Mandatory Pre-sentence Report	DUI: Re-training Offenders	DUI: Re-habilitating Offenders	Citation/Comment
New Hampshire	O ¹		O ²	● ³		O ⁴	<p>¹N.H. Rev. Stat. Ann. §262-A:62 (Ch. 543, Laws 1981) [recodified effective 1/82 as §265:82 (Chs. 146 and 543, Laws 1981)]. Revocation for 60 days—at least. Court's discretion lies only in determining period of revocation between 60 days to 2 years. <i>State v. Greenwood</i>, 115 N.H. 117, 334 A. 2d 644 (1975).</p> <p>²§262-A:62 (Ch. 543, Laws 1981) [recodified effective 1/82 as §265:82 (Ch. 146, Laws 1981)]. Second or subsequent offense within a 7 year period.</p> <p>³Mandatory in felony cases; optional in misdemeanors. §651:4.</p> <p>⁴A Justice of the Superior Court or of a municipal or district court may commit a felon or person charged with a misdemeanor to a duly designated rehabilitation treatment center. §172:13.</p>
New Jersey	O ¹		●	O ²	O ³	O ³	<p>¹N.J. Stat. Ann. §39:4-50(a). Revocation for not less than 60 days nor more than 180 days upon first conviction, 1 to 3 years revocation upon second conviction.</p> <p>²Required by court rule §3:21-2; optional in some cases. §26:44-6.</p> <p>³§39:4-50(a) and (b). A court imposing a term of imprisonment for DWI offense may commit the offender to an "in-patient" rehabilitation program approved by the Director of the Division of Motor Vehicles. A DWI offender must attend an alcohol education or rehabilitation program approved by the Director of the Division of Motor Vehicles.</p>
New Mexico	O ¹	O ²	●	O ³	O ⁴	O ⁴	<p>¹N.M. Stat. Ann. §66-5-29. Mandatory except for first offenders who successfully complete a driver rehabilitation program.</p> <p>²§66-5-35. However, no such license for habitual offenders. §66-5-30.</p> <p>³§66-5-29.</p>

CHART 7 / Driver Screening, Rehabilitation, and Sanctions—Continued

State	DUI: Mandatory Revocation or Suspension	DUI: Limited License After Conviction	DUI: Mandatory Imprisonment	DUI: Mandatory Presentence Report	DUI: Retraining Offenders	DUI: Rehabilitating Offenders	Citation/Comment
New Mexico—Continued							<p>¹§66-5-29; §43-2-1 et seq. After presentence investigation, a trial court, at its discretion, may order a first offender to attend "driving-while-intoxicated school," also called the driver rehabilitation program, approved by both the court and the Division of Motor Vehicles.</p>
New York	O ¹	O ²	● ³	● ⁴	O ⁵	O ⁵	<p>¹N.Y. Veh. and Traf. Law §510(2)(a)(iii), (b).</p> <p>²Id. §§521(f) and 530.</p> <p>³§1192. Optional for first offenders. Second and subsequent offenses constitute felonies but the section establishing penalties for such felonies was omitted in the 1975 law. The criminal code does not specify the authorized disposition for this type of felony.</p> <p>⁴Criminal Procedure Law §390.20 requires presentence investigation and report in all felony convictions. They are optional in misdemeanor cases.</p> <p>⁵§§520 and 523-a. An alcohol and drug rehabilitation program has been established within the Department of Motor Vehicles for DWI offenders who qualify and who choose to attend. In addition to the driver rehabilitation program, the commissioner may establish guidelines for alcohol and highway safety programs designed to address the gamut of DWI and retraining needs. The commissioner sets criteria for requiring attendance at such clinics and may suspend the driver's license or privilege of any person who fails to attend such clinic as required. See also §1678.</p>
North Carolina	O ¹	O ²	O ³	● ⁴	O ⁴	O ⁴	<p>¹N.C. Gen. Stat. §20-17(2).</p> <p>²§20-179(b). At court's discretion upon first conviction, a limited license may be issued on the condition that the person enroll in and successfully complete within a period of 75 days an alcohol and drug education traffic school program of instruction.</p> <p>³§20-179(a)(2). Upon second or subsequent conviction.</p>

CHART 7 / Driver Screening, Rehabilitation, and Sanctions—Continued

State	DUI: Mandatory Revocation or Suspension	DUI: Limited License After Conviction	DUI: Mandatory Imprisonment	DUI: Mandatory Pre-sentence Report	DUI: Retraining Offenders	DUI: Rehabilitating Offenders	Citation/Comment
North Carolina—Continued							<p>⁴§20-179.1. Trial judge may request a presentence investigation in the case of a first or subsequent DWI conviction to determine whether offender would benefit from any retraining and rehabilitative treatment; trial court may order suitable treatment for the person as a condition for suspension of a sentence or in addition to prescribed penalties. §20-179.2 entrusts the Dept. of Human Resources with the responsibility of developing and overseeing the program.</p>
North Dakota	O ¹	O ²	● ³	● ⁴	O ⁵	O ⁵	<p>¹N.D. Cent. Code §39-06.1-10 requires suspension of license upon accumulation of 12 or more points. DUI is assigned 15 points. "Being in actual physical control of a motor vehicle while under the influence" is assigned only 6 points.</p> <p>²§39-06.1-11.</p> <p>³§39-08-01(2). Upon conviction, penalties of a fine, prison, or both are imposed.</p> <p>⁴§39-08-01(5). Court may require such report.</p> <p>⁵§§39-06.1-13(2), 39-08-01(5). Both retraining and rehabilitation for DUI offenders is possible. Court may refer a DUI offender to an addiction facility licensed by the North Dakota State Department of Health for diagnosis before sentencing or as part of sentence. Completion of driver training course approved by the licensing authority entitles a DUI offender to reduction of points.</p>
Ohio	O ¹	⊗ ²	O ³	●	O ³	O ⁴	<p>¹Ohio Rev. Code Ann. §4507.16 (B). The trial judge shall suspend the license for 30 days to 3 years.</p> <p>²In <i>City of Akron v. Doane</i>, 391 N.E. 2d 755 (1978) the court held that a minimum 30-day suspension under §4507.16 is mandatory and that the sentence cannot be modified or suspended on hardship grounds. See also <i>State ex rel. Maraites v. Gorman</i>, 326 N.E. 2d 868 (1975) where a similar request for a limited license for em-</p>

CHART 7 / Driver Screening, Rehabilitation, and Sanctions—Continued

State	DUI: Mandatory Revocation or Suspension	DUI: Limited License After Conviction	DUI: Mandatory Imprisonment	DUI: Mandatory Pre-sentence Report	DUI: Retraining Offenders	DUI: Rehabilitating Offenders	Citation/Comment
Ohio—Continued							<p>ployment purposes was denied. After 30 days, the court could presumably modify or suspend the sentence and issue a limited license.</p> <p>³§4511.99(A). At least 3 day imprisonment is mandatory.</p> <p>⁴§§2935.33, 2935.36, and 3720.01. The State has established both a "pretrial diversion" program and a comprehensive alcohol treatment and control program.</p>
Oklahoma	O ¹		O ²	● ³	O ⁴	O ⁴	<p>¹Okla. Stat. Ann. tit. 47, §§6-205 (2) and 6-206.</p> <p>²Tit. 47, §11-902(c). 10 days to a year upon first conviction. 1 to 5 years in jail upon second conviction.</p> <p>³Tit. 22, §982. Offenders "shall be punished by imprisonment of 10 days to one year upon first conviction."</p> <p>⁴Tit. 47, §§11-902.1 and 11-902.2, and 11-902.3. Nonprofit educational institutions of higher learning, governmental, or nonprofit organizations offer courses for drinking driver retraining; court may, upon DWI defendant's plea of guilty or <i>nolo contendere</i>, but before judgment is entered, commit defendant to undertake these courses (with defendant's consent). Further judicial proceedings are deferred only upon conditions that defendant attend and successfully complete courses at own expense.</p>
Oregon	● ¹	O ²	● ³	● ⁴	O ⁵	O ⁵	<p>¹Ore. Rev. Stat. §484.415(2). Trial judge's discretion.</p> <p>²§§482.777, 482.478, and 484.415 (2) (c). Trial judge's discretion and Dept. of Transportation discretion.</p> <p>³§§484.365, 161.615. Discretionary.</p> <p>⁴Authorized by §137.007 whenever court has discretion in sentencing.</p>

CHART 7 / Driver Screening, Rehabilitation, and Sanctions—Continued

State	DUI: Mandatory Revocation or Suspension	DUI: Limited License After Conviction	DUI: Mandatory Imprisonment	DUI: Mandatory Pre-sentence Report	DUI: Retraining Offenders	DUI: Rehabilitating Offenders	Citation/Comment
Oregon—Continued							⁵ §§482.477, 484.415(1) and (2) (c), 484.385 (2). Has detailed provisions for retraining and rehabilitative treatment of DWI offenders. Court may, with consent of defendant, request a diagnostic assessment to determine if defendant needs a rehabilitative treatment. Court may then issue a DWI rehabilitation order. Successful satisfaction of the order entitles the defendant to avoid additional sentence.
Pennsylvania	O ¹	O ²	● ³	O ⁴	O ⁵	O ⁵	<p>¹Pa. Stat. Ann. tit. 75, §1532. Suspension on first conviction and revocation upon second. Habitual offenders lose license. Tit. 75, §1542.</p> <p>²The statutes do not mention restricted licenses. However, case law has allowed restrictive licenses in hardship situations. <i>License of Gorrin</i>, 31 D. & C. 2d 565 (1964); <i>Comm. v. Woodyear</i>, 25 Beaver 53 (1964).</p> <p>³Tit. 18, §§106(b)(8)—one year maximum discretionary sentence.</p> <p>⁴Tit. 75, §1548(a).</p> <p>⁵Tit. 75, §§1548, 1549. Second DWI offense within a five year period leads to a court instituted pre-sentence investigation to determine efficacy of rehabilitative treatment. Department of Motor Vehicles also maintains driver improvement schools through the Commonwealth for retraining purposes.</p>
Rhode Island	O ¹		● ²	● ³	O ⁴	O ⁴	<p>¹R.I. Gen. Laws Ann. §§31-11-6, 31-11-7. Optional under §31-22-21 for “consuming” alcoholic beverages.</p> <p>²At the discretion of the District Court. §31-27-2(c).</p> <p>³Mandatory in any case where one year sentence or more may be imposed. §12-19-6.</p> <p>⁴§31-27-2(c). State offers retraining treatments for DUI offenders. Special courses on driving while intoxicated are operated by state accredited colleges or universities. DUI offenders may be or-</p>

CHART 7 / Driver Screening, Rehabilitation, and Sanctions—Continued

State	DUI: Mandatory Revocation or Suspension	DUI: Limited License After Conviction	DUI: Mandatory Imprisonment	DUI: Mandatory Pre-sentence Report	DUI: Retraining Offenders	DUI: Rehabilitating Offenders	Citation/Comment
Rhode Island—Continued							dered by the court to attend such courses, including persons refusing to take BAC tests. §40.1-4-10 et seq. offers treatment facilities for rehabilitating alcoholics.
South Carolina	O ¹	O ²	●	●	O ²	O ³	<p>¹S.C. Code Ann. §56-5-2990. Suspension for a period of 6 months for first conviction, which increases upon subsequent convictions.</p> <p>²§56-1-1320. Retraining DWI offenders is possible through the alcohol traffic safety school. Attendance in and completion of retraining program is mandatory for issuance of a provisional (driving) permit. §56-1-1330.</p> <p>³§44-51-610 et seq. create the S.C. alcoholic center. No specific mention of DUI is made in these sections.</p>
South Dakota	O ¹	O ²	●	● ⁴	O ⁵	O ⁵	<p>¹S.D. §§32-23-2, 32-23-3, 32-23-4. Revocation for 30 days or more upon first conviction. Longer period of revocation for second and subsequent convictions.</p> <p>²§§32-23-2, 32-23-3.</p> <p>³§22-6-2. Defendants may be punished by imprisonment for 1 year.</p> <p>⁴Discretionary. §23A-27-5.</p> <p>⁵§34-20A-1 et seq. Division of Alcoholism is specially created to develop, encourage, and foster statewide, regional, and local plans and programs for rehabilitation.</p>
Tennessee	O ¹	O ²	O ³	●	O ⁴	O ⁴	<p>¹Tenn. Code Ann. §55-10-403(a). Up to six months upon the first conviction. Longer suspension periods for second and subsequent convictions.</p> <p>²§§55-7-113(d), 55-10-403(d).</p> <p>³§55-10-403(a). 48 hours to 11 months and 29 days upon the first conviction. Increased period for second and subsequent convictions. The judge may require the individual to remove litter from State property, or work in a recycling center in lieu of or in addition to any penalties.</p>

CHART 7 / Driver Screening, Rehabilitation, and Sanctions—Continued

State	DUI: Mandatory Revocation or Suspension	DUI: Limited License After Conviction	DUI: Mandatory Imprisonment	DUI: Mandatory Pre-sentence Report	DUI: Retraining Offenders	DUI: Rehabilitating Offenders	Citation/Comment
Tennessee—Continued							⁴ §§55-7-113(d), 55-10-301(b). After a second or subsequent conviction, a license will not be reissued unless the driver submits evidence of completing treatment by an approved professional or at an approved facility.
Texas	O ¹	O ²	● ³	● ^{3,5}	O ⁴	O ⁵	<p>¹Tex. Rev. Civ. Stat. Ann. art. 6687b, §24.</p> <p>²Art. 6687b, §§23A, 25.</p> <p>³Tex. Rev. Civ. Stat. Ann. art. 67901I-1, 6701I-2. The judge may commute the jail sentence for first offenders; on subsequent offenses, the judge may impose jail, a fine, or both.</p> <p>⁴Art. 24A. Department of Motor Vehicles is empowered to establish a statewide retraining and education program. The Department may require a DWI offender to complete the program before a suspended or a new license is reissued.</p> <p>⁵Art. 5561c-1, §12 allows the judge of any court to commit an individual to an alcoholic detoxification or treatment program.</p>
Utah	O ¹	O ²	O ³	● ⁴	O ⁵	O ⁵	<p>¹Utah Code Ann. §41-6-44(g) (Ch. 63, Laws 1981) and §41-2-18 (a) (2) and (3).</p> <p>²§41-2-18(d). At the discretion of the Department of Motor Vehicles on recommendation of the trial judge.</p> <p>³§41-6-44(d), (e). Upon the very first conviction if a fatality occurs; otherwise, upon second conviction within a period of 5 years. Upon second and subsequent convictions, the court may require the person to work in an alcoholism rehabilitation facility in lieu of jail. No part of sentence for first offense may be suspended nor may the offender be paroled.</p> <p>⁴Optional in felony cases. §76-3-404.</p> <p>⁵§§63-43-9 to 63-43-12. Driver to be rehabilitated or retrained pays the fee. Cities are also empowered to provide for such programs and to impose necessary</p>

CHART 7 / Driver Screening, Rehabilitation, and Sanctions—Continued

State	DUI: Mandatory Revocation or Suspension	DUI: Limited License After Conviction	DUI: Mandatory Imprisonment	DUI: Mandatory Pre-sentence Report	DUI: Re-training Offenders	DUI: Re-habilitating Offenders	Citation/Comment
Utah—Continued							judicial supervision. §41-2-18(e) allows the judge to recommend which programs the DUI offender will attend.
Vermont	O ¹	O ²	● ³	●	O ⁴	O ⁴	<p>¹Vt. Stat. Ann. tit. 23, §1206(a), (b). Suspension occurs for one year, except in cases resulting in a fatality where reduction of suspension period to 90 days is possible if the driver completes a driver's rehabilitation program supervised or certified by the Commissioner of Motor Vehicles. Tit. 23, §1208 authorizes longer suspensions for second and subsequent convictions.</p> <p>²Tit. 23, §1206(a) and tit. 23, §1208(b). After three months suspension, a license may be reinstated with conditions as the commissioner may impose.</p> <p>³Tit. 23, §1210. A person may receive a fine, a jail sentence, or both.</p> <p>⁴Tit. 23, §1206(b), §1208(e), and §1209(a). DWI offenders are assigned to an approved rehabilitation program. Offender pays a pro-rata share of the entire cost of administering the program to a maximum of \$125.00; successful completion of the program is a condition for reduction of a suspension period or reissuance of a new license.</p>
Virginia	O ¹		O ²	● ³	O ⁴	O ⁴	<p>¹Va. Code Ann. §46.1-421. Revocation for 3 years upon first and second conviction; permanent revocation upon subsequent convictions.</p> <p>²§18.2-270. Possible jail sentence for first conviction. Second or subsequent convictions within 10 years results in confinement in jail for not less than one month nor more than 1 year. §46.1-423.1 requires additional periods of confinement for a fourth offense within a 10 year period.</p> <p>³In felony cases court may, or upon motion by defendant shall, require presentence report. §19.2-299.</p>

CHART 7 / Driver Screening, Rehabilitation, and Sanctions—Continued

State	DUI: Mandatory Revocation or Suspension	DUI: Limited License After Conviction	DUI: Mandatory Imprisonment	DUI: Mandatory Pre-sentence Report	DUI: Re-training Offenders	DUI: Re-habilitating Offenders	Citation/Comment
Virginia—Continued							<p>⁴§18.2-271.1. With the leave of the court or upon court order, with or without a finding of guilty by the court or jury, DUI offender can enter the alcohol safety action or driver alcohol rehabilitation program. The court may also suggest alternate programs. The offender pays the fee, which can be waived, for undergoing the alcohol safety action program.</p>
Washington	O ¹	O ²	O ³	●	O ⁴	O ⁴	<p>¹Wash. Rev. Code Ann. §46.61.515(5). Suspension for 30 days upon first conviction. Longer suspension upon second, and revocation upon third conviction.</p> <p>²§46.20.391 authorized issuance of occupational licenses following license suspension or revocation.</p> <p>³For first offense, one day to one year imprisonment. Minimum one day in jail cannot be waived unless judge finds imposition will pose a risk to defendant's physical or mental wellbeing. Increased periods of confinement for second and subsequent offenses. §46.61.515(1) and (2).</p> <p>⁴§46.61.515(1) and (2). Upon conviction, the person, in addition to jail, etc., shall be required to complete a course in an approved alcohol information school. A person committing two or more DUI offenses within a period of 5 years, may be assigned to such a program and granted a suspended sentence with the proviso that he/she attend the alcohol treatment program.</p>
West Virginia	O ¹	⊗ ²	O ³	● ⁴	O ⁵	O ⁵	<p>¹Temporary suspension to be effective 10 days after offender's receipt of a copy of the order. Lengthy or permanent revocations for DUI causing death or injuries as well as for habitual offenders. Shorter revocation for DUI not involving accident. W.Va. Code Ann. §§17C-5A-1, 17C-5A-2.</p> <p>²Possible under §17C-5A-3 (b) (2).</p>

CHART 7 / Driver Screening, Rehabilitation, and Sanctions—Continued

State	DUI: Mandatory Revocation or Suspension	DUI: Limited License After Conviction	DUI: Mandatory Imprisonment	DUI: Mandatory Pre-sentence Report	DUI: Re-training Offenders	DUI: Re-habilitating Offenders	Citation/Comment
West Virginia—Continued							<p>³§17C-5-2. A minimum of 24 hours to a maximum of six months for DUI. Increasing periods for causing injury etc., second or subsequent convictions. §17C-5-2. These sentences are to “be considered mandatory and shall not be subject to suspension or probation, except that the court may provide for community service, work release alternatives, or weekend or part-time confinements. §17C-5-2(1).</p> <p>⁴Optional commitment for pre-sentence diagnosis in felony cases. §62-12-7a.</p> <p>⁵§17C-5A-3. First (DUI) offender is granted the option to attend an alcohol and drug countermeasure school. The school is conducted under the jurisdiction and the supervision of the division of alcoholism and drug abuse of the Department of Mental Health. Limited license privilege is accorded to facilitate attendance at the school.</p>
Wisconsin	O ¹	O ²	O ³	● ⁴	O ⁵	O ⁵	<p>¹Wis. Stat. Ann. §343.30(1q)(a). Upon 1st conviction—revoked for a period of 90 days to 6 months. Offender may be committed to rehabilitation center in lieu of revocation. §343.30(1q)(b). If two or more convictions within 5 years then offender’s license is revoked for 3 months to 1 year.</p> <p>²§343.10. Occupational license.</p> <p>³§346.65(2). Upon second or subsequent conviction.</p> <p>⁴§343.30(1q)(a) authorizes the trial court to order presentence assessment by an approved public treatment facility. Thus in <i>City of Prairie Du Chien v. Evans</i>, 302 N.W. 2d 61(1981) it was asserted that the trial court is not required either to refer a person convicted of a first drunken driving offense for an assessment or to order that person to attend a traffic safety school.</p> <p>⁵§§343.30; 345.60. Judge decides whether the defendant should receive an assessment by a counse-</p>

CHART 7 / Driver Screening, Rehabilitation, and Sanctions—Continued

State	DUI: Mandatory Revocation or Suspension	DUI: Limited License After Conviction	DUI: Mandatory Imprisonment	DUI: Mandatory Pre-sentence Report	DUI: Retraining Offenders	DUI: Rehabilitating Offenders	Citation/Comment
Wisconsin—Continued							lor regarding commitment either to a treatment agency or to an educational program (Group Dynamics—Traffic Safety School). Generally, chronic cases are referred to treatment, while lesser cases are referred for retraining. Convicted drunk driver may be sent to safety schools in lieu of other penalties. 60 Op. Atty. Gen. 261 (1971).
Wyoming	O ¹	O ²	O ³	●	O ⁴	O ⁴	<p>¹Wyo. Stat. Ann. §31-7-127. Progressive suspension or revocation: 90 days for first offense, 6 months upon second, 12 months for third conviction. Habitual offenders lose license for a year. §31-7-126 (a) (iii).</p> <p>²§31-7-127(c). Possible at the discretion of the Division of Motor Vehicles after hearing.</p> <p>³§31-5-233(d). Seven days minimum to a maximum of 90 days upon second conviction. No eligibility for probation, pardon, parole, commutation or suspension of sentence, or release on any other basis until at least 7 days are spent in jail. The judge may suspend part or all of the discretionary portion of an imprisonment sentence if the defendant agrees to undergo alcohol education or treatment as prescribed by the judge. Longer periods for habitual offenders.</p> <p>⁴Alcohol education or treatment are permissible alternatives to imprisonment under certain circumstances §31-5-233(d). But no Statewide program has been established. Some counties provide for voluntary assistance centers and Minor court judges encourage DUI offenders to attend such programs (for rehabilitation/retraining), by lessening fines or waiving license suspension, etc.</p>
Washington, D.C.	O ¹		● ²	● ³	O ⁴	O ⁴	¹ D.C. Code Ann. §40-716 requires revocation upon conviction. For purpose of revoking or suspending a driver's license, a motorist is acting under the influence of alcohol even when its effect is combined with that of another

CHART 7 / Driver Screening, Rehabilitation, and Sanctions—Continued

State	DUI: Mandatory Revocation or Suspension	DUI: Limited License After Conviction	DUI: Mandatory Imprisonment	DUI: Mandatory Presentence Report	DUI: Retraining Offenders	DUI: Rehabilitating Offenders	Citation/Comment
Washington, D.C.—Continued							<p>cause, such as taking prescription drugs; emphasis in motor vehicle regulations is on physical conditions which render one a dangerous motorist, rather than on whether such condition resulted from matters within the driver's control. <i>G.J. Bodoh v. District of Columbia Bureau of Motor Vehicle Services</i>, 377 A. 2d 1135 (D.C. App. 1977).</p> <p>²§40-716 makes imprisonment optional.</p> <p>³Authorized under §23-103. Apparently not optional.</p> <p>⁴§24-521 et. seq. The general rehabilitation facilities are open to DWI offenders. Court may commit an offender to such a facility. Cost has to be reimbursed by the patient. While the statute specifically rules out drug offenses, a first (DWI) offender may enter rehabilitation program in lieu of conviction.</p>
Puerto Rico	O ¹	O ²	O ³	O ⁴	O ⁴	O ⁴	<p>¹P.R. Laws Ann. tit. 9, §1042(h). Suspension until defendant participates in and passes the driver's improvement course or until the agency in charge of the rehabilitation certifies that the person is qualified to drive.</p> <p>²Tit. 9, §1042(i).</p> <p>³Tit. 9, §1042(b). Fine or imprisonment, or both, at court's discretion.</p> <p>⁴Tit. 9, §1042. Court requires detailed presentence report from the Correctional Administration regarding usefulness of committing the defendant to the program for rehabilitation. The program is established and approved by the Department of Addiction Services in coordination with the Department of Transportation and Public Works. See also 1 above.</p>
Virgin Islands	O ¹		●	●	O ²	O ²	<p>¹V.I. Code Ann. tit. 20, §493(b). Automatic suspension for at least 6 months for first conviction.</p> <p>²Tit. 5, §4612 et seq. Both district and territorial courts are given jurisdiction to divert certain offenders (including DWI offenders)</p>

CHART 7 / Driver Screening, Rehabilitation, and Sanctions—Continued

State	DUI: Mandatory Revocation or Suspension	DUI: Limited License After Conviction	DUI: Mandatory Imprisonment	DUI: Mandatory Pre-sentence Report	DUI: Retraining Offenders	DUI: Rehabilitating Offenders	Citation/Comment
Virgin Islands—Continued							to a program of community supervision and services. Only first offenders are eligible for the benefits of community supervision and services, among other rehabilitation and retraining services.

VIII

Legal Age for Consumption of Beer, Wine, and Distilled Spirits

Chart 8 depicts the legal age for consumption of beer, wine, and distilled spirits. In most States, the minimum age for both purchase and consumption of an alcohol beverage is identical. Beer containing 3.2 percent alcohol or less (by

weight) frequently is referred to as "low point"; that containing more than 3.2 percent is sometimes referred to as "high point." Generally, "table" wine contains 14 percent or less alcohol (by volume). Exceptions, such as the Mississippi and

South Dakota definitions, are noted. Table wine is often referred to as "light" wine.¹

¹Source: Adapted from charts prepared by Statistics & Economic Research Division, Distilled Spirits Council of the United States, Inc., September, 1981.

CHART 8 / Legal Age for Consumption of Beer, Wine, and Distilled Spirits

State	Effective Date of Latest Amendment	Minimum Drinking Age ^a and Beverage				
		Beer		Wine		Distilled Spirits
		Not Over 3.2% Alcohol	Over 3.2% Alcohol	Table	Fortified	All
Alabama	7/75	19	19	19	19	19
Alaska	9/70 83	19 21	19 21	19 21	19 21	19 21
Arizona	8/72	19	19	19	19	19
Arkansas	3/35	21	21	21	21	21
California	12/33	21	21	21	21	21
Colorado	4/45	18	(b)	21	21	21
Connecticut	10/72 88	18 20	18	18 20	18 20	18 20
Delaware	7/72 83	20 21	20 21	20 21	20 21	20 21
District of Columbia	2/34	18	18	18	21	21
Florida	10/80	19	19	19	19	19
Georgia	9/80	19	19	19	19	19
Hawaii	3/72	18	18	18	18	18
Idaho	7/72	19	19	19	19	19
Illinois	1/80	21	21	21	21	21
Indiana	1/34	21	21	21	21	21
Iowa	7/78	19	19	19	19	19
Kansas	3/49	18	21	21	21	21
Kentucky	5/38	21	21	21	21	21
Louisiana	11/48	18	18	18	18	18
Maine	10/77	20	20	20	20	20
Maryland	7/74 82	18 21	18 21	18 21	21	21
Massachusetts	4/79	20	20	20	20	20
Michigan	12/78	21 ^c	21 ^c	21 ^c	21 ^c	21 ^c
Minnesota	9/76	19	19	19	19	19
Mississippi	7/66	18	18 ^d	18 ^d	21	21
Missouri	5/45	21	21	21	21	21
Montana	7/79	19	19	19	19	19
Nebraska	7/80	20	20	20	20	20
Nevada	12/33	21	21	21	21	21
New Hampshire	5/79	20	20	20	20	20
New Jersey	1/80	19 21	19 21	19 21	19 21	19 21
New Mexico	12/34	21	21	21	21	21
New York	5/34	18 19	18 19	18 19	18 19	18 19
North Carolina	5/35 85	18 19	18 19	18 21	18 21	18 21
North Dakota	12/36	21	21	21	21	21
Ohio	8/35	18	21 19	21	21	21
Oklahoma	12/76 83	18 21	21	21	21	21
Oregon	12/33	21	21	21	21	21
Pennsylvania	7/35	21	21	21	21	21
Rhode Island	7/81	20	20	20	20	20
South Carolina	5/35	18	18	18	18	21
South Dakota	7/72	18	21	21 ^e	21	21
Tennessee	6/79	19	19	19	19	19
Texas	8/81	19	19	19	19	19
Utah	3/35	21	21	21	21	21
Vermont	11/71	18	18	18	18	18

CHART 8 / Legal Age for Consumption of Beer, Wine, and Distilled Spirits—Continued

State	Effective Date of Latest Amendment	Minimum Drinking Age ^a and Beverage				
		Beer		Wine		Distilled Spirits
		Not Over 3.2% Alcohol	Over 3.2% Alcohol	Table	Fortified	All
Virginia	7/81	19 ^b	19 ^b 83	21	21	21
Washington	1/34	21	21	21	21	21
West Virginia	7/80	18 19	18 19	18 19	18 19	18 19
Wisconsin	3/72 7/84	18	18 19	18 19	18 19	18 19 JK84
Wyoming	5/73	19	19	19	19	19

NOTES:

- ^aIn general, minimum drinking age means minimum age for which purchase of the relevant alcohol beverage is legal.
- ^bPurchase of this beverage illegal.
- ^cEffective 12/3/78, the Minimum Drinking Age was raised from 18 to 19; effective 12/23/78, the legal age was raised again to 21.
- ^dAge 18 applies in Mississippi for both beer having not over 4.0% alcohol and "light wine"; otherwise, age 21.
- ^eDefined as wine under 3.2% by weight of 4% by volume.
- ^fEffective 7/1/81, off-premises sales of beer—19; on-premises sales of beer—18.
- ^gNo minimum age is given for persons accompanied by parent or guardian.

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