

# **Alcohol & Highway Safety Laws:**

A  
National Overview

**U.S. Department of Transportation**  
National Highway Traffic Safety Administration  
Washington, D.C. 20590

The need for a national overview of selected states' traffic laws, practices, and procedures has its genesis in the fact that the majority of states are desirous of knowing how other states treat certain traffic incidents and violations. 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 responding with comments and/or recommendations relative to its accuracy and usefulness to the following address: U.S. Department of Transportation, National Highway Traffic Safety Administration, Traffic Safety Programs (NTS-15, Washington, D.C. 20590).

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## Understanding the Charts

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

▲—solid triangle: Designates existence of **specific** statutory authority.

△—blank triangle: Designates **possible** existence of statutory or case law authority of a less specific nature.

None—Without footnote denotes no statutory provision.

With footnote denotes contrary statute or case law.

# Executive Summary

## Alcohol and Highway Safety Laws: A National Overview—1979

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 such an overview of the nation's alcohol and safety laws. Very briefly, the charts and the maps proceed as follows:

### Map 1: States with a Preliminary Breath Test Law

To introduce the columnar display of Chart 1, the map indicates the 14 jurisdictions which have adopted some form of a preliminary breath test (PBT).

### Chart 1: Preliminary Breath Test (PBT) Laws

This chart begins the sequence from arrest and screening to conviction and rehabilitation. Distinguished from implied consent blood, breath or urine tests, which are administered after arrest as a means of obtaining evidence of intoxication, PBT's are administered at the site of a traffic stop, for screening purposes. The chart examines those states that authorize Preliminary 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) Tests: Statutory Authority

Charts 2, 3, 4 and 5 illustrate the various state approaches and procedures with implied consent BAC tests. This chart initiates the process by examining the legal authority for blood alcohol concentration (BAC) tests. Fourteen states have general "implied consent" laws which are intended to operate independently of the questions of probable cause or the right to search pursuant to a valid arrest. Most states link implied consent to the post-arrest situation only and 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. This distinction takes on larger significance for those states which desire to adopt pre-arrest PBT screening procedures as an additional traffic safety law enforcement technique.

### Chart 3: BAC Tests Required After Traffic Accidents

This chart analyzes the pertinent laws requiring BAC tests after traffic accidents. The primary thrust of these laws is to gather statistical data on all accidents to determine to what extent alcohol is truly involved in traffic injuries. They sometimes leave open the question of the admissibility of the test results in criminal or civil proceedings. Older laws of this type were permissive in nature, merely granting the authority to the coroner, who characteristically would administer BAC tests when the traffic report indicated that the death was "alcohol related." The laws listed in the chart usually require such tests for certain classes of accidents.

### Chart 4: BAC Tests: Scope of Police Authority

Tests involving the withdrawal of blood usually are limited to trained medical personnel. In many states, however, the police officer is granted the authority to conduct a breath test and in some instances a urine test. The statutory language in many states also speaks 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's options in BAC testing procedures. The question of the defendant's option to select a particular BAC test and the corresponding issue of the officer's prerogative to prescribe such tests can become critical. Most states have also authorized supplemental tests, at the accused's option. This can reflect a desire to afford a mistakenly accused or tested individual the right to challenge 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: May 31, 1979

The map depicts the evidentiary use which may be made of Blood Alcohol Concentration (BAC) tests in court. Thirteen states provide that a driver shall be deemed guilty (illegal per se) where a specific BAC level is exceeded (generally 0.10%). More states utilize the presumption formula at 0.10%. Florida, Missouri, New York, South Dakota and Utah have both illegal per se and presumptive evidence laws and are so duly noted. Different percentage levels are noted on the map.

### Chart 6: BAC Levels as Evidence in State Courts

This chart reflects fundamentally different approaches to the evidentiary weight of BAC tests in court. The majority of jurisdictions speak of "presumptions" or "prima facie evidence" of intoxication where BAC levels exceed 0.10%

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of blood alcohol concentration. A few states vary the percentage level used in this formula, which is noted in the comment line. The remaining states use a qualitatively different formula, which states that if a certain BAC level is exceeded (generally 0.10%) the driver shall be deemed guilty. Because these statutes remove the presumptive language and make the BAC limit absolute in nature, they have been termed "illegal per se" laws.

#### **Chart 7: Driver Screening, Rehabilitation and Sanctions**

Chart 7 focuses on the various administrative and judicial procedures available to deal with defendants accused or convicted of driving under the influence. Some states have developed pre-trial screening procedures which allow for the early identification and rehabilitation of drivers who have alcoholism or drug abuse problems. About half of the states require a pre-sentence report 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 Driving under the Influence is

a widespread feature of DUI penalty laws dealing with repeat offenders. Only laws which mandate a sentence of imprisonment and a fine are treated as mandatory. A majority of the states provide for a limited license for individuals convicted of DUI. Typically such limited licenses allow the license holders to drive only while they are working or are on their way to and from work or a driving improvement course. This chart also shows those states that have post-conviction driver retraining 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. The differences on the issue of the minimum drinking age is duly pointed out. Nearly a half of the jurisdictions studied set the drinking age at 18, while over half of the remaining states make 21 as the minimum drinking age.

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

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# **I. Preliminary Breath Test (PBT)**

Map 1 and Chart 1 depict the states with laws governing the Preliminary Breath Test, a test sometimes given to a person reasonably suspected of Driving Under the Influence of Alcohol (DUI). Preliminary breath test laws are generally not based on statutory provisions of implied consent. Implied consent laws invariably require arrest as a condition precedent to administration of breath tests.

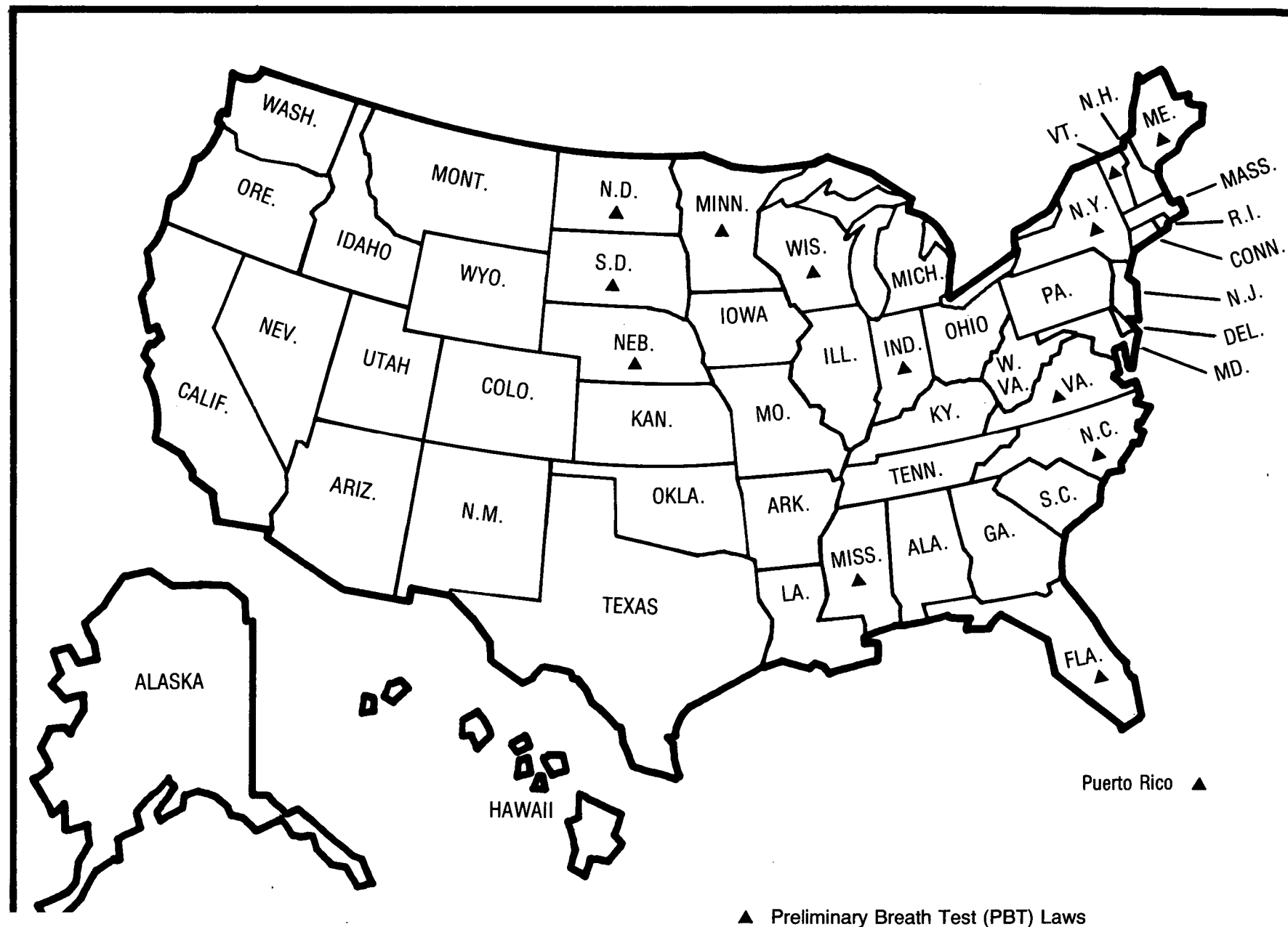
There are a number of advantages of the Preliminary Breath Test process. Such a procedure allows a law enforcement officer to administer a screening test before putting the person under arrest for DUI. This enables the police officer to avoid relying primarily on a psycho-motor test to make a DUI arrest. It provides an easy and prompt alternative to in-custody implied consent 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 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 of 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, Minnesota, Mississippi, Nebraska, North Carolina, North Dakota, South Dakota, Vermont, Virginia, Wisconsin, and Puerto Rico have statutory provisions providing for PBT. A significant recent addition to the group is Wisconsin which, under an amendment, added the PBT to its Implied Consent provisions.

In each state the PBT continues to be used primarily as a preliminary screening test to determine the need for subjecting a person to 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 at trial. A second Implied Consent test must be taken for evidentiary purposes.

## Map 1/Preliminary Breath Test (PBT) Laws: Overview—May 31, 1979



## 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	▲ <sup>1</sup>	None	▲ <sup>2</sup>	<sup>1</sup> Fla. Stat. Ann. §322.261(1)(b)1. Driver may demand PBT or officer may request and give test with driver's consent. <sup>2</sup> §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	▲ <sup>1</sup>	None	None	<sup>1</sup> A reading of Ind. Stat. Ann. §39-4-4.5-3 may suggest the existence of a PBT in Indiana. But in reality these chemical tests are more than PBT although given prior to arrest.
Iowa				
Kansas				
Kentucky				
Louisiana				



## Chart 1/Preliminary Breath Test Laws

State	PBT	Suspension or Revocation for Refusal	Authority for Admission in Judicial Proceedings	Citation/Comment
Maine	▲ <sup>1</sup>	▲ <sup>2</sup>	None	<sup>1</sup> Me. Rev. Stat. Ann. tit. 29, §1312.11C. <sup>2</sup> Any refusal to take the test when requested by a police officer will result in penalty—which presumably means that the defendant will have to submit to a full fledged BAC chemical test, the refusal to which results in suspension of the operator's license. Title 29, §1312.
Maryland				
Massachusetts				
Michigan				
Minnesota	▲ <sup>1</sup>	▲ <sup>2</sup>	▲ <sup>3</sup>	<sup>1</sup> Minn. State Ann. §169.121 Subd. 6. <sup>2</sup> PBT used only as a guide to officer's decision to arrest and administer BAC tests. Driver can refuse without arrest or revocation of license if he submits to blood, breath or urine test. <sup>3</sup> Not admissible in court action except to prove that a chemical test was properly required of a person pursuant to §169.123, Subd. 2.
Mississippi	▲ <sup>1</sup>	None	None	<sup>1</sup> 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	▲ <sup>1</sup>	None <sup>2</sup>	None	<sup>1</sup> Neb. Rev. Stat. §39-669.08(3) (A misdemeanor punishable by fines). <sup>2</sup> Refusal to submit to PBT or a finding of .10% alcohol content as the result of a PBT are grounds for arrest. However, offering of a PBT is not a condition precedent to an arrest under §39.669.08. <i>State v. Brosco</i> , 199 Neb. 532, 260 N.W. 2d 303 (1977).
Nevada				
New Hampshire				
New Jersey				
New Mexico				

## Chart 1/Preliminary Breath Test Laws

State	PBT	Suspension or Revocation for Refusal	Authority for Admission in Judicial Proceedings	Citation/Comment
New York	▲ <sup>1</sup>	None <sup>2</sup>	▲	<sup>1</sup> Veh. & Traf. Law § 1193a. <sup>2</sup> In fact, attempted imposition of a penalty for failure to make a breath test in accordance with provisions of this section was seen as violating the Fifth Amendment right against self-incrimination. <i>People v. Delaney</i> , 1975, 83 Misc. 2d 576, 373 N.Y.S. 2d 477 (1975).
North Carolina	▲	None	None <sup>1</sup>	<sup>1</sup> 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. However, the test is rarely used.
North Dakota	▲ <sup>1</sup>	▲ <sup>2</sup>	None <sup>3</sup>	<sup>1</sup> N.D. Cent. Code § 39-20-14. <sup>2</sup> The statute clearly states that refusal is sufficient cause of revocation or suspension of driving license. Hearing and judicial review are provided for. <sup>3</sup> Results of the test or tests are used only for determining the efficiency of administering BAC test.
Ohio				
Oklahoma				
Oregon				
Pennsylvania				
Rhode Island				
South Carolina				
South Dakota	▲	None <sup>1</sup>	None	<sup>1</sup> S.D. Code § 23-23-1.2. Although submission to breath test is required if requested by a police officer, no suspension or revocation is presumed.
Tennessee				
Texas				
Utah				
Vermont	▲ <sup>1</sup>	None	None	<sup>1</sup> Although Vt. Stat. Ann. tit. 23 § 1202 notes a breath test of an ambiguously preliminary nature, in reality it is properly a part of the implied consent BAC test.

## Chart 1/Preliminary Breath Test Laws

State	PBT	Suspension or Revocation for Refusal	Authority for Admission in Judicial Proceedings	Citation/Comment
Virginia	▲	None	None <sup>1</sup>	<sup>1</sup> Va. Code Ann. § 18.2-267(a). Statute states that PBT results are not admissible in a judicial proceeding. § 18.2-267(e).
Washington				
West Virginia				
Wisconsin	▲ <sup>1</sup>	None <sup>2</sup>	None <sup>3</sup>	<sup>1</sup> Wis. Stat. Ann. § 343.305(2)(a). The police officer may request a person prior to arrest or to issuance of citation to take the PBT. <sup>2</sup> The person may refuse a PBT without any penalty provided he agrees to take the regular BAC tests. Id. <sup>3</sup> Specially made inadmissible. § 343.305(2)(a).
Wyoming				
Washington, DC				
Puerto Rico	▲ <sup>1</sup>	None	None	<sup>1</sup> P.R. Laws Ann. tit. 9, § 1043(a). Notes an "initial breath test" to be performed in addition to BAC tests of blood, breath or urine. Also see tit. 9, § 1043(c)(2).
Virgin Islands				

## II. 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 underpinning for such tests.<sup>1</sup> New York was the first state to adopt the implied consent law for chemical tests for intoxication (in 1953). In 1971, Illinois became the 50th state to adopt such a provision. Presently, the District of Columbia, Puerto Rico, Virgin Islands, and all the states, with the partial exception of Maryland, have implied consent laws. In Maryland, while the statutory authority for subjecting non-residents and unlicensed drivers to BAC tests remains that of implied consent, the authority to subject a Maryland resident or licensee to such tests has come to rest on express consent. Express consent to undergo such BAC tests is required as a precondition for receiving a Maryland license to drive or operate a vehicle.

While the various state-implied consent statutes vary somewhat, they follow a common basic pattern as follows:

1. Any person who operates a motor vehicle upon a public highway shall be 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. If arrested for any offense arising out of acts alleged to have been committed while driving or in actual physical 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.
  - 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.<sup>2</sup>

One of the main purposes of the implied consent statute is to assist in the prosecution of cases involving driving under the influence of alcohol. However, there are other ancillary benefits of such a statute. It provides more dependable evidence—a chemical test is a scientific determination of intoxication—in contrast to the less reliable observations such as psycho-motor tests and opinions of witnesses. Also, it is intended to help reduce the carnage on our nation's highways, a major cause of which is driving under the influence of alcohol.

Implied consent laws are not considered criminal in nature, and therefore are construed rather broadly. In addition to their broad construction, such laws also are excluded from the strictures of Miranda warnings. Nor does the Sixth Amendment right to counsel apply. Since the constitutional right to counsel attaches only in criminal prosecutions, and no such right attaches to proceedings under BAC test provisions, a driver cannot insist on a court appointed counsel before deciding whether to take the test.<sup>3</sup> Implied consent for such chemical tests invariably is

<sup>1</sup>Refusal 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*.

<sup>2</sup>See Uniform Vehicle Code Section 6-205.1.

<sup>3</sup>The 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).

incidental to arrest, although specificity may be lacking in some state codes such as Pennsylvania and Oklahoma. State laws sometimes base this consent upon the mere fact of driving on public highways.<sup>4</sup>

Courts have consistently claimed that the authority to subject a defendant to such chemical tests of breath, blood, urine, saliva or other bodily substance for the purpose of determining blood alcohol content has its basis in the defendant being placed under arrest. Implied consent laws are to be specifically followed and evidence from its application can be received only as expressly provided.<sup>5</sup> However, where necessity requires immediate testing (to prevent destruction of evidence) and when facts establish probable cause to make an arrest, testing prior to arrest and without permission may be held valid by courts in particular circumstances.<sup>6</sup> Implied consent generally applies only to the misdemeanor offense of driving under the influence of intoxicating liquor and thus, one charged with the felony of causing injury while driving under the influence of intoxicating liquor may be precluded from claiming any statutory right to refuse to take a breathalyzer test.<sup>7</sup>

Arrest itself, however, is very broadly interpreted in this context. In most jurisdictions "arrest" is first taken to imply a physical arrest and to a lesser extent a "legal" arrest. Physical arrest is defined to include any act of detention or any restraint of freedom of the defendant.<sup>8</sup> Thus, courts have held that the mere request of the police officer that the defendant take a chemical test for determining the blood alcohol content is regarded as a proper arrest for the purpose of satisfying the statutory requirement of "arrest."<sup>9</sup>

The issue of implied consent of the dead, unconscious, or incompetent also arises. Most states specifically provide that such consent is presumed to exist on the part of a defendant who is incapable, unconscious, or dead. Such consent is presumed from the fact that the defendant in

any of these categories cannot exercise his or her right to refuse—an act which itself is subject to penalties, often leading to the revocation or suspension of driving privileges.<sup>10</sup>

Most states provide for more than one mode of chemical test. Generally, the tests provided are either of breath, urine, or blood. Some states, for example, Indiana, Missouri and Oregon, however, provide for a broader range of tests including tests of saliva or other bodily substance. While chemical tests based on breath, urine, and saliva are possible 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 coming under Fourth Amendment protection against unreasonable search and seizure. Although the Fourth Amendment of the United States Constitution is not seen as barring a compulsory seizure of a person's blood without a warrant, *Schmerber v. California*, 384 U.S. 757 (1966), to avoid constitutional problems the taking of the sample is to be "done in a medically approved manner", incidental to a lawful arrest and must be based upon the reasonable belief that the person is intoxicated.<sup>11</sup>

Charts 2, 3, 4 and 5 illustrate the various state approaches and procedures with BAC testing, most of which are either directly or indirectly related to a particular state's implied consent law. It is important to note that numerous state laws and provisions in the above charts are either ambiguous or silent on any given BAC issue. Also, some case law decisions relevant to certain state BAC-related laws or provisions may be contra to the latter or incompatible with the spirit in which they were enacted or implemented. For this reason, the observer of the BAC-related charts might well find that certain symbols used to denote a given state's law or procedure may be at variance with his or her opinion of what the particular case to be.

<sup>4</sup>Although 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. Leffer*, 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).

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

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

<sup>7</sup>*People v. Sanchez*, supra.

<sup>8</sup>A West Virginia court defined an arrest as "the taking, seizing or detaining of the person of another (1) by touching or putting hands on him; (2) by any act or speech that indicates an intention to take him into custody and that subjects him to the actual control and will of the person making the arrest; or (3) by the consent of the person to be arrested." *State v. Byers*, 224 S.E. 2d 726 (W. Va. 1976).

<sup>9</sup>*C'wealth of Pa. v. Schultz*, 360 A.2d 754 (1976). Officers are not required to make any formal declaration of arrest or apply manual force in order to arrest a person, rather "an arrest may be accomplished by an act or intention to take the person into custody and subject him to the control and will of the person making the arrest." (emphasis added). *Strelecki v. Coan*, 235 A.2d 347 (N.J. 1967).

<sup>10</sup>One's right to refuse to consent to a blood test is a personal right which terminates upon death. Thus, a sample of blood taken from a decedent by a county coroner could be used as evidence and no consent of the family or the executor of the estate was necessary. *Zenith Transport, Ltd. v. Bellingham National Bk.*, 644 Wa. 2d 967, 395 P.2d 498 (1964).

<sup>11</sup>*People v. Superior Court of Kern County*, 100 Cal. Rptr. 281, 493 P.2d 1145 (1972).

## 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	▲ <sup>1</sup>	None	▲ <sup>2</sup>	<sup>1</sup> Ala. Code §32-5-192(a). <sup>2</sup> §32-5-192(b).
Alaska	▲ <sup>1</sup>	None	None	<sup>1</sup> Alaska Stat. §28.35.031. Authorizes only a chemical breath test, not the taking of blood for BAC test. However, this section does not preclude the introduction of blood test results in circumstances where the taking of the blood sample did not violate any of the accused's constitutional rights. <i>Layland v. State</i> , 535 P. 2d 1043 (Alaska 1975). Also see, <i>Sullivan v. Municipal City of Anchorage</i> 577 P. 2d 1070 (Ak. 1978).
Arizona	▲ <sup>1</sup>	None	▲ <sup>2</sup>	<sup>1</sup> Ariz. Rev. Stat. Ann. §28.691. <sup>2</sup> Id.
Arkansas	▲ <sup>1</sup>	None	▲ <sup>2</sup>	<sup>1</sup> Ark. Stat. Ann. §75.1045(a). <sup>2</sup> §75.1045(b).
California	▲ <sup>1</sup>	None	▲ <sup>2</sup>	<sup>1</sup> Cal. Vehicle Code § 13353(a). Although evidence of breathalyzer or other chemical test is not necessary element of prosecution for drunk driving. Test ampoules must not be intentionally destroyed by law enforcement officials, and must be made available to defendant if it constitutes "material" evidence. <i>People v. Hitch</i> , 117 Cal. Rptr. 9, 527 P. 2d 361 (1974). <sup>2</sup> Id.
Colorado	▲ <sup>1</sup>	▲ <sup>2</sup>	▲ <sup>3</sup>	<sup>1</sup> Colo. Rev. Stat. Ann. §42-4-1202. <sup>2</sup> Id. Only regarding 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. <sup>3</sup> §42-4-1202(3)(d).
Connecticut	▲ <sup>1</sup>	None	▲ <sup>2</sup>	<sup>1</sup> Conn. Gen. Stat. Ann. §14-227b. <sup>2</sup> §§14-227b and 14-227c.
Delaware	▲ <sup>1</sup>	None	▲ <sup>2</sup>	<sup>1</sup> Del. Code Ann. tit. 1, §21-2740. <sup>2</sup> §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).

## 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
Florida	▲ <sup>1</sup>	None	▲ <sup>2</sup>	<sup>1</sup> Fla. Stat. Ann. §322.261(1)(a). The detaining for a non-criminal traffic infraction or for allegedly driving under the influence of alcoholic beverages, based on probable cause, is sufficient lawful arrest to satisfy the statutory requirement for BAC test purposes. Opp. Atty. Gen., 076-23 Jan 29, 1976. <sup>2</sup> §322.261(1)(c).
Georgia	▲ <sup>1</sup>	None	▲ <sup>2</sup>	<sup>1</sup> Ga. Code Ann. §68B-306. <sup>2</sup> §68B-306(b); §21-227 also authorizes blood test of unconscious and dead persons.
Hawaii	▲ <sup>1</sup>	None	▲ <sup>2</sup>	<sup>1</sup> Hawaii Rev. Stat. §286-151. <sup>2</sup> §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 forceable removal by state of blood sample from persons arrested for DWI, forceable 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 663 (Ha. 1978).
Idaho	▲ <sup>1</sup>	None	Δ <sup>2</sup>	<sup>1</sup> Idaho Code §49-352. <sup>2</sup> While dead persons are covered under §49-1016, consent of unconscious and incompetents are not specifically provided for.
Illinois	▲ <sup>1</sup>	None	Δ <sup>2</sup>	<sup>1</sup> Ill. Ann. Stat. ch. 95 1/2, §11-501.1. <sup>2</sup> Presumably limited. Ch. 95 1/2, §11-501.1(3) specifically precludes breath test as such persons are deemed to have withdrawn their consent thereto. However, ch. 95 1/2, §11.501(e) provides for blood test of unconscious and otherwise incapable persons. Ch. 31 §10 also provides for blood test or urine test of dead persons.
Indiana	▲ <sup>1</sup>	▲ <sup>2</sup>	Δ <sup>3</sup>	<sup>1</sup> Ind. Stat. Ann. §9-4-4.5-1. <sup>2</sup> Arrest deemed not essential for tests. Implied consent deemed to exist on the very fact of driving, operating or in actual physical control of a vehicle. Thus, tests are not incidental to arrest. §9-4-4.5-3. <i>Clark v. State</i> . 372 N.E. 2d 185 (Ind. 1978). <sup>3</sup> §9-6-7-4 requires collection of specimen only from dead drivers and pedestrians 15 yrs. of age or older who die within 4 hrs. of an accident.
Iowa	▲ <sup>1</sup>	None	▲ <sup>2</sup>	<sup>1</sup> Iowa Code. Ann. §321B.3. <sup>2</sup> §321B.5. A licensed physician must certify to such death, unconsciousness, or incapability to consent or refuse; conditions deemed obviating the requirement of arrest, and advice under §321B.6.

## 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
Kansas	▲ <sup>1</sup>	None	Δ <sup>2</sup>	<sup>1</sup> Kan. Stat. Ann. 8-1001. <sup>2</sup> BAC test results based on blood samples taken from a semi-conscious person was held inadmissible as unreasonable search and seizure. <i>State v. Gordon</i> , 549 P.2d 886 (Kan. 1976).
Kentucky	▲ <sup>1</sup>	None	▲ <sup>2</sup>	<sup>1</sup> Ky. Rev. Stat. Ann. §186.565(1). <sup>2</sup> §186.565(2).
Louisiana	▲ <sup>1</sup>	None	▲ <sup>2</sup>	<sup>1</sup> La. Civ. Code Ann. art. 1 §32.661A. <sup>2</sup> §32.661B.
Maine	▲ <sup>1</sup>	None	None	<sup>1</sup> Me. Rev. Stat. Ann., tit. 29-1312.
Maryland	▲ <sup>1</sup>	None	None	<sup>1</sup> Md. Ann. Code art. 16-205.1. Only for non-resident and unlicensed persons. For others, consent to take BAC test upon detention is express inasmuch as such a consent is a prerequisite for license for renewal or issuance. Non-residents' and unlicensed persons' consent is implied from driving within the State.
Massachusetts	▲ <sup>1</sup>	None	Δ <sup>2</sup>	<sup>1</sup> Mass. Gen. Laws Ann. ch. 90, §24(f). <sup>2</sup> Blood tests of dead persons are required under ch. 38, §6A.
Michigan	▲ <sup>1</sup>	None	None	<sup>1</sup> Mich. Comp. Laws Ann. §9.2325(3).
Minnesota	▲ <sup>1</sup>	Δ <sup>2</sup>	None	<sup>1</sup> Minn. Stat. Ann. §169.123 Subd. 2 (subj. to §169.121). <sup>2</sup> If the person is involved in an accident resulting in property damage, personal injury, or death—§169.123 Subd. 2; BAC tests are also possible if PBT (under §169.121) is refused or if the PBT shows BAC of .10% or more.
Mississippi	▲ <sup>1</sup>	None	▲ <sup>2</sup>	<sup>1</sup> Miss. Code Ann. §63-11-5. <sup>2</sup> §63-11-7.
Missouri	▲ <sup>1</sup>	None	None	<sup>1</sup> Mo. Ann. Stat. §577.020.1.
Montana	▲ <sup>1</sup>	None	▲ <sup>2</sup>	<sup>1</sup> Mont. Rev. Codes Ann. tit. 61-8-402(1). <sup>2</sup> Id.
Nebraska	▲ <sup>1</sup>	None	▲ <sup>2</sup>	<sup>1</sup> Neb. Rev. Stat. §39-669.08. <sup>2</sup> §39-669.10.



## 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
Nevada	▲ <sup>1</sup>	None	▲ <sup>2</sup>	<sup>1</sup> Nev. Rev. Stat. §484.383.1. <sup>2</sup> §484.383.3.
New Hampshire	▲ <sup>1</sup>	None	▲ <sup>2</sup>	<sup>1</sup> N.H. Rev. Stat. Ann. ch. 262-A:69-a. <sup>2</sup> Ch. 262-A:69-d. The provisions 262A:69-C, i.e., satisfaction of certain prerequisites such as apprising the defendant of his right to additional, independent tests do not apply to such cases and test results are <i>per se</i> admissible.
New Jersey	Δ <sup>1</sup>	Δ <sup>2</sup>	None	<sup>1</sup> N.J. Stat. Ann. §39.4-50.2. Does not specifically talk of prior arrests. However, §39.4-50.4 makes arrest/detention the basis for penalties for refusal to take test. <sup>2</sup> Although exists from an apparent reading of the §39.4-50.2—for all practical purposes, arrest is to precede any request for test. "Arrest" is also broadly interpreted, for arrest takes place when police officer makes the determination (of driver's violation of §39.4-50) and informs motorist that he must go to police station for further investigation. Atty. Gen. 1962 No. 2. Also see <i>Strelecki v. Coan</i> , 97 N.J. Super. 279, 235 A. 2d 37 (1967).
New Mexico	▲ <sup>1</sup>	None	▲ <sup>2</sup>	<sup>1</sup> N.M. Stat. Ann. ch. 66-8-1017. The implied consent is read rather broadly. For in <i>State v. Trujillo</i> , 85 N.M. 208, 510 P. 2d 1079 N.M. App., 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. <sup>2</sup> Ch. 66-8-108.
New York	▲ <sup>1</sup>	Δ <sup>2</sup>	None	<sup>1</sup> N.Y. Veh. & Traf. Law 1194. <sup>2</sup> Exists only if a preliminary breath test administered under §1193a indicates consumption of alcohol (by the defendant) §1194.1(2). Otherwise, under §1194.1(1) arrest of a motorist is a requisite as a foundation for further demand by an officer that he/she submits to such tests. <i>Burns v. Hutts</i> , 20 App. Div. 2d 752, 247 N.Y.S. 2d 311 (1964); <i>June v. Tofany</i> , 34 A.D. 2, 732, 311 N.Y.S. 2d 782 (1970) <i>Kowanes v. State Dept. of Motor Vehicles</i> 54 A.D. 2d 611, 387 N.Y.S. 2d 331 (1976) <i>People v. Porter</i> , 46 A.D. 2d 307, 362 N.Y.S. 2d 249 (1974).
North Carolina	▲ <sup>1</sup>	None	▲ <sup>2</sup>	<sup>1</sup> N.C. Gen. Stat. §29-16.2(a). <sup>2</sup> Id. Para. (b). Test or tests are to be administered subject to the provisions of General Statutes ch. 29-139.1.

## 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
North Dakota	▲ <sup>1</sup>	None	▲ <sup>2</sup>	<sup>1</sup> N.D. Cent. Code, tit. 39-20-01. <sup>2</sup> §39-20-03.
Ohio	▲ <sup>1</sup>	None	▲ <sup>2</sup>	<sup>1</sup> Ohio Rev. Code Ann. §4511.191 and §4511.191(A). <sup>2</sup> Id. Para. (B).
Oklahoma	▲ <sup>1</sup>	None	▲ <sup>2</sup>	<sup>1</sup> Okla. Stat. Ann. tit. 47, §751. A valid arrest is essential to invoke provisions of implied consent law giving the police officer the right to request a motorist to submit to the test. Application of Hendrix, 539 P. 2d 1402 (Okla. Crim. App. 1975). <sup>2</sup> But the Implied Consent statute is 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. <i>State v. Lord</i> , 576 P. 2d 1181 (Okla. Crim. App. 1978). Upon regaining consciousness, the person can, however, revoke his consent to blood test.
Oregon	▲ <sup>1</sup>	None	None	<sup>1</sup> Ore. Rev. Stat. §487.805. Implied consent is only for a chemical test of breath. For tests of blood, saliva or urine, express consent is essential. §487.835.
Pennsylvania	▲ <sup>1</sup>	None	None	<sup>1</sup> Pa. Stat. Ann. tit. 75-1547. A lawful arrest is a necessary constitutional and statutory prerequisite to the operation of 75 §1547. For the purpose of this section, the mere stopping of the individual and request to take tests are seen as arrest. Physical restraint of one's freedom suffices. <i>Dept. of Transportation Bureau of Traffic Safety v. Shultz</i> , 360 A. 2d 754 (1976). However, <i>Comm. Dept. of Trans., Bureau of Traffic Safety v. Kelly</i> 936 P. 2d 864 (1979) held that propriety of officers request that driver take chemical test was not dependent on legality of arrest.
Rhode Island	▲ <sup>1</sup>	None	None	<sup>1</sup> Implied under R.I. Gen. Laws Ann. §31-27-2.1.(a), §31-27-3 implies that a person is put under arrest (physical, need not be legal) before request for test is made. §37-27-2.1(a) concurs with this provision.
South Carolina	▲ <sup>1</sup>	None	▲ <sup>2</sup>	<sup>1</sup> S.C. Code Ann. §56-5-2950. <sup>2</sup> §56-5-2950(c).
South Dakota	▲ <sup>1</sup>	None	None	<sup>1</sup> S.D. Code §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 where defendant was neither arrest nor charged with any offense before consenting to the blood test. <i>State v. Bosanco</i> , 213 N.W. 2d 345 (S.D. 1973).

## 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
Tennessee	▲ <sup>1</sup>	None	▲ <sup>2</sup>	<sup>1</sup> Tenn. Code Ann. §59-1045. <sup>2</sup> §59-1045.
Texas	▲ <sup>1</sup>	None	None	<sup>1</sup> Tex. Rev. Civ. Stat. Ann. art. 6701 §-5, §1. For the purpose of chemical test of breath only. BAC test of urine or blood is possible only with the expressed consent of the defendant.
Utah	▲ <sup>1</sup>	None	▲ <sup>2</sup>	<sup>1</sup> Utah Code Ann. §41-6-44.10(a) and (b) (read together). <sup>2</sup> §41-6-44.10(c).
Vermont	▲ <sup>1</sup>	▲ <sup>2</sup>	▲ <sup>3</sup>	<sup>1</sup> Vt. Stat. Ann. tit. 23, §1202. <sup>2</sup> Tit. 23, §1202. Arrest does not seem to be a statutory pre-requisite, although the mandatory aspect of word "shall" as used in the section requires police officers to request that suspect submit to test. <i>State v. Welch</i> , 135 Vt. 316, 376 A.2d 351 (1977); <i>State v. Brown</i> , 125 Vt. 58, 209 A. 2d 324 (1965). <sup>3</sup> Tit. 23, §1202.
Virginia	▲ <sup>1</sup>	None	None	<sup>1</sup> Va. Code Ann. §18.2-268(b).
Washington	▲ <sup>1</sup>	None	▲ <sup>2</sup>	<sup>1</sup> Wash. Rev. Code Ann. §46.20.308(1). The code unequivocally states that unless the person to be tested is unconscious (or dead or incompetent) the chemical test administered shall be of his breath only. See <i>Albright v. Dept. of Motor Vehicles</i> , 81 Wa. 2d 609, 503 P. 2d 739 (1972). <sup>2</sup> §46.20.308(2).
West Virginia	▲ <sup>1</sup>	None	▲ <sup>2</sup>	<sup>1</sup> W. Va. Code Ann. §17C-5A-1. <sup>2</sup> §17C-5A-3.
Wisconsin	▲ <sup>1</sup>	None	▲ <sup>2</sup>	<sup>1</sup> Wis. Stat. Ann. §343.305(1). <sup>2</sup> Id. sub. para. (c).
Wyoming	▲ <sup>1</sup>	None	▲ <sup>2</sup>	<sup>1</sup> Wyo. Stat. Ann. §31-6-102(a). <sup>2</sup> §31-6-102(b).
Washington, DC	▲ <sup>1</sup>	None	▲ <sup>2</sup>	<sup>1</sup> D.C. Code Encycl. Ann. §40-1002(a). <sup>2</sup> §40-1005.

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

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### **III. BAC Tests After Traffic Accidents: Fatal and Non-Fatal**

State legislation requiring BAC tests after traffic accidents is depicted in Chart 3. Some states like California, Colorado, Hawaii, Nebraska specifically require blood tests of a dead driver or any other victim (passenger or pedestrian); the results of these tests sometimes are admissible in criminal and civil suits. For the most part,

however, these laws exist for statistical purposes, as evidenced by the fact that some states do not even allow the release of such records or expressly prohibit any identification.<sup>1</sup> Most states gather such test reports from coroners, or from officials performing such functions who are required to withdraw the samples and submit periodic reports of such 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.

Most states do not specify any of these tests for the purpose of measuring blood alcohol content for non-fatal accidents. Administering such tests to a driver involved in a non-fatal accident generally is left to the discretion of the law enforcement officer. The latter may request any person driving or operating a vehicle to take such a test if there is any reasonable question of DUI. A few states, including Connecticut, Hawaii, Maine, and New York require compulsory BAC tests of a driver involved in an accident of any nature.

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<sup>1</sup>U.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, Illinois, Minnesota, Missouri, Nebraska, New Mexico, New York, Pennsylvania, Utah, Washington, West Virginia, and Louisiana follow this provision.

## 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	None	Δ <sup>1</sup>	None	None	<sup>1</sup> Not specifically provided for by statute; however, in <i>Patterson v. State</i> , 344 So. 2d 543 (1977), the provisions of the BAC test were deemed to have application to dead persons.
Alaska	Δ <sup>1</sup>	None	None	None	<sup>1</sup> BAC tests are possible only with consent of the accused, except if done under Cr. Pro. Rule 16(c)(1)(VII) or if it is routine medical BAC test satisfying Rules of Civil Pro. 44(a)(2); Rules of Cr. Pro. 26(e), <i>Sullivan v. Anchorage</i> 577 P. 2d 1070 (Ak. 1978).
Arizona	Δ <sup>1</sup>	▲ <sup>2</sup>	None	None	<sup>1</sup> Ariz. Rev. Stat. Ann. §28.692, as interpreted in <i>Massengil v. Yuma County</i> , 104 Ariz. 518, 456 P. 2d 376 (1969), is presumed to require such tests. Duty to arrest and test is presumed as owed to the general public, and thus the state cannot be subjected to wrongful death claims based on negligence or strict liability. <i>Massengil, Supra</i> . <sup>2</sup> Id. Also possible under §28.691(c).
Arkansas	Δ <sup>1</sup>	▲ <sup>2</sup>	▲ <sup>3</sup>	Δ <sup>4</sup>	<sup>1</sup> Statute does not specifically talk of such tests, but possible under Ark. Stat. Ann. §75.1045(a). <sup>2</sup> §42-333.75.1045(b) can also be read as providing for such authority. <sup>3</sup> Id. <sup>4</sup> Possible under §75-1045.
California	▲ <sup>1</sup>	▲ <sup>2</sup>	▲ <sup>3</sup>	None	<sup>1</sup> Cal. Vehicle Code §13353. <sup>2</sup> Cal. Gov't Code §27491.25. <sup>3</sup> Id. Must be 15 years or older.
Colorado	▲ <sup>1</sup>	▲ <sup>2</sup>	▲ <sup>3</sup>	Δ <sup>4</sup>	<sup>1</sup> Colo. Rev. Stat. Ann. §42-4-1202(3)(a). <sup>2</sup> §42-4-1202(3)(d) §42-4-1211(1). <sup>3</sup> Id. Must be 15 years or older. <sup>4</sup> §42-4-1202(3)(a). However, covers such accidents under misdemeanor requiring such tests.
Connecticut	▲ <sup>1</sup>	▲ <sup>2</sup>	▲ <sup>3</sup>	▲ <sup>4</sup>	<sup>1</sup> Conn. Gen. Stat. Ann. §§14-109, and 14-227(c). <sup>2</sup> §§14-109 and 14-227(c). <sup>3</sup> Id. <sup>4</sup> §14-227(b).

## 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	
Delaware	None	None	None	None	
Florida	None	Δ <sup>1</sup>	Δ <sup>2</sup>	None	<sup>1-2</sup> None specified under Title XXII, dealing with laws relating to Motor Vehicles, but covered under Title XXVII, Public Health, Fla. Stat. Ann. §406.11. BAC tests are performed on all traffic accident victims of 14 years of age and older who die within 4 hours of the accident. Also see Op. Atty. Gen. 074-60, Feb. 28, 1974.
Georgia	Δ <sup>1</sup>	▲ <sup>2</sup>	▲ <sup>3</sup>	Δ <sup>4</sup>	<sup>1</sup> Such test is possible both under Ga. Code Ann. §68B-306 as well as §21-227 which requires blood test of unconscious victims of traffic accidents. <sup>2</sup> §21-227 authorizes blood tests only. <sup>3</sup> Id. <sup>4</sup> Possible under §68-1625.
Hawaii	▲ <sup>1</sup>	▲ <sup>2</sup>	▲ <sup>3</sup>	▲ <sup>4</sup>	<sup>1</sup> Hawaii Rev. Stat. §286-151. <sup>2</sup> §286.154. Only blood test is authorized. <sup>3</sup> Id. <sup>4</sup> §286-151.
Idaho	Δ <sup>1</sup>	▲ <sup>2</sup>	▲ <sup>3</sup>	Δ <sup>4</sup>	<sup>1</sup> Possible, if arrested, for Idaho Code §49-352 will come into effect. <sup>2</sup> §49-1016 provides for blood test only. However, the results of the test are used exclusively for statistical purposes and sample must not be identified with the name of the deceased. <sup>3</sup> Id. <sup>4</sup> Possible under §49-352.
Illinois	▲ <sup>1</sup>	▲ <sup>2</sup>	▲ <sup>3</sup>	None	<sup>1</sup> If unconscious, only blood test possible from the readings of Ch. 95½, Ill. Ann. Stat. §11.501(e) and §11.501.1(e). <sup>2</sup> Only blood test possible under 95½, §11-501(e). Ch. 31.10 provides for blood or urine test only. <sup>3</sup> Id.

## 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	
Indiana	▲ <sup>1</sup>	▲ <sup>2</sup>	▲ <sup>3</sup>	Δ <sup>4</sup>	<sup>1</sup> Ind. Stat. Ann. §9-6-7-4. Presumably required also under §9-4-45-3(a). <sup>2</sup> Under §9-6-7-4. <sup>3</sup> Id. <sup>4</sup> May be possible under §9-4-45-3 if driver becomes unconscious.
Iowa	None	None	None	None	
Kansas	None	Δ <sup>1</sup>	Δ <sup>2</sup>	None	<sup>1</sup> May be possible under Kan. Stat. Ann. §§19-1031 to 19-1033. <sup>2</sup> Id.
Kentucky	None	Δ <sup>1</sup>	Δ <sup>2</sup>	None	<sup>1</sup> Although not specifically provided for with a view to determine level of intoxication, coroners under Ky. Rev. Stat. Ann. §189.590 may perform such tests. <sup>2</sup> Blood samples may be taken from such dead persons. <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 such dead if necessary. OA6 73-470; OA6 73-196.
Louisiana	Δ <sup>1</sup>	Δ <sup>2</sup>	None	None	<sup>1</sup> But may be possible under La. Civ. Code Ann. §32.398E. <sup>2</sup> Id.
Maine	▲ <sup>1</sup>	None	None	▲ <sup>2</sup>	<sup>1</sup> Me. Rev. Stat. Ann. Tit. 29, §1312.11(c). Preliminary, only a breath test is given; however, if results indicate alcohol consumption, the subsequent test is ordered. <sup>2</sup> Tit. 29, §1312.11(c).
Maryland	▲ <sup>1</sup>	▲ <sup>2</sup>	▲ <sup>3</sup>	▲ <sup>4</sup>	<sup>1</sup> If police officer has reasonable grounds to suspect DWI, driver arrested is tested under Md. Ann. Code §16-205.1. <sup>2</sup> All adult traffic accident fatalities (drivers & non-drivers) tested by directive of State Medical Examiner under authority of Article 22, §4. <sup>3</sup> Id. <sup>4</sup> Id., note 1.
Massachusetts	None	▲ <sup>1</sup>	▲ <sup>2</sup>	None	<sup>1</sup> Mass. Gen. Laws Ann. Ch. 38, §6A makes it a duty of the medical examiner to submit blood test results. <sup>2</sup> Id.



## 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	
Michigan	None	Δ <sup>1</sup>	Δ <sup>2</sup>	None	<sup>1</sup> May be possible under Mich. Comp. Laws Ann. §5.953(5). <sup>2</sup> Id.
Minnesota	▲ <sup>1</sup>	▲ <sup>2</sup>	▲ <sup>3</sup>	▲ <sup>4</sup>	<sup>1</sup> Minn. Stat. Ann. §169.123 Subd. 2. <sup>2</sup> §169.09 Subd. 11. <sup>3</sup> 16 years or older. Id. <sup>4</sup> §169.123 Subd. 2.
Mississippi	▲ <sup>1</sup>	▲ <sup>2</sup>	Δ <sup>3</sup>	Δ <sup>4</sup>	<sup>1</sup> Miss. Code Ann. §63-11-7. If the police officer has reasonable grounds to suspect DWI. <sup>2</sup> Id. Also possible under §63-3-419. <sup>3</sup> Presumed under §63-11-7. Also possible under §63-3-419. <sup>4</sup> Can be presumed from the wording of §§63-11-5 and 63-11-7.
Missouri	None	▲ <sup>1</sup>	▲ <sup>2</sup>	None	<sup>1</sup> Mo. Ann. 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). <sup>2</sup> Id.
Montana	None	▲ <sup>1</sup>	▲ <sup>2</sup>	None	<sup>1</sup> Provided for under Mont. Rev. Codes Ann. §61-7-112. <sup>2</sup> Id.
Nebraska	▲ <sup>1</sup>	▲ <sup>2</sup>	▲ <sup>3</sup>	▲ <sup>4</sup>	<sup>1</sup> Neb. Rev. Stat. §39-6.104.08. <sup>2</sup> §39-6.104.07. <sup>3</sup> If over 16 years of age §39-6.104.07. <sup>4</sup> §39-6.104.08.
Nevada	None	▲ <sup>1</sup>	▲ <sup>2</sup>	None	<sup>1</sup> Nev. Rev. Stat. 484.394. Blood sample or samples are to be drawn within 8 hours of the accident. <sup>2</sup> Id. Unlike many other states, test results become matter of public record.
New Hampshire	▲ <sup>1</sup>	▲ <sup>2</sup>	▲ <sup>3</sup>	None	<sup>1</sup> N.H. Rev. Stat. Ann. Ch. 262-A-69-ℓ. <sup>2</sup> Blood is to be taken within 4 hours of the accident. <sup>3</sup> Dead adult pedestrian only.

## 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	
New Jersey	▲ <sup>1</sup>	▲ <sup>2</sup>	▲ <sup>3</sup>	None	<sup>1</sup> N.J. Stat. Ann. §26:2B-24. <sup>2</sup> §26:2B-24. Samples of blood for test to be taken within 4 hours of accident. <sup>3</sup> Id.
New Mexico	None	▲ <sup>1</sup>	▲ <sup>2</sup>	None	<sup>1</sup> N.M. Stat. Ann. Ch. 66-7-211 and 24-11-6. <sup>2</sup> Id.
New York	▲ <sup>1</sup>	▲ <sup>2</sup>	▲ <sup>3</sup>	▲ <sup>4</sup>	<sup>1</sup> N.Y. Veh. & Traf. Law §1193-a. <sup>2</sup> N.Y. County Law §674.3(b). <sup>3</sup> Id. <sup>4</sup> N.Y. Veh. & Traf. Law §1193-a.
North Carolina	None	Δ <sup>1</sup>	Δ <sup>2</sup>	None	<sup>1</sup> May be possible under N.C. Gen. Stat. §152.7 and §20-166.1. <sup>2</sup> Id.
North Dakota	Δ <sup>1</sup>	▲ <sup>2</sup>	▲ <sup>3</sup>	Δ <sup>4</sup>	<sup>1</sup> 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. <sup>2</sup> §39-20-13. <sup>3</sup> Id. <sup>4</sup> <i>Supra.</i> , note 1.
Ohio	Δ <sup>1</sup>	Δ <sup>2</sup>	Δ <sup>3</sup>	Δ <sup>4</sup>	<sup>1</sup> Can be performed under Ohio Rev. Code Ann. §4511.19.1(B), subject to §§313.12 to 313.16 of the Revised Code. <sup>2</sup> Id. <sup>3</sup> Id. <sup>4</sup> May be possible under §313.17 of the Revised Code.
Oklahoma	None	Δ <sup>1</sup>	Δ <sup>2</sup>	None	<sup>1</sup> Okla. Stat. Ann. 47-§10-113(b) can be construed to cover such tests. <sup>2</sup> Id.
Oregon	None	▲ <sup>1</sup>	▲ <sup>2</sup>	None	<sup>1</sup> Ore. Rev. Stat. §146.113(2). Blood or urine test is performed to determine BAC. <sup>2</sup> Id.

## 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	
Pennsylvania	None <sup>1</sup>	▲ <sup>2</sup>	▲ <sup>3</sup>	None <sup>4</sup>	<sup>1</sup> Pa. Stat. Ann. ch. 75, §1547(i) provides for driver to request a breath test. <sup>2</sup> Ch. 75, §3749(b). <sup>3</sup> Id. Pedestrians over 15 years of age. And all occupants (of a car) over 15 if the driver of the vehicle can't be identified. <sup>4</sup> Breath test may be possible at driver's request. Ch. 75 §1547(i).
Rhode Island	None	Δ <sup>1</sup>	Δ <sup>2</sup>	None	<sup>1</sup> Although not specifically provided for, such tests are possible under R.I. Gen. Laws Ann. Titles 23-4-14 and 23-4-9. <sup>2</sup> Id.
South Carolina	None	▲ <sup>1</sup>	▲ <sup>2</sup>	None	<sup>1</sup> S.C. Code Ann. §56-5-1320 requires coroners to report on dead. <sup>2</sup> Id.
South Dakota	▲ <sup>1</sup>	▲ <sup>2</sup>	▲ <sup>3</sup>	▲ <sup>4</sup>	<sup>1</sup> S.D. Code §32-23-1.2 provides for a PBT test in each accident. If such test indicates DWI, the law enforcement officer may require that the driver submit to a chemical test. <sup>2</sup> §34-25-22.1 covers such test requirements. <sup>3</sup> Id. <sup>4</sup> <i>Supra</i> , Note 1.
Tennessee	None	Δ <sup>1</sup>	Δ <sup>2</sup>	None	<sup>1</sup> Possible under §38-709. Also possible under §59-1045. See <i>Bankers Life &amp; Gas Co. v. Jenkins</i> , 547 S.W. 2d 237 (Tenn. 1977). <sup>2</sup> Id.
Texas	Δ <sup>1</sup>	Δ <sup>2</sup>	Δ <sup>3</sup>	None	<sup>1</sup> Possible under Tex. Rev. Civ. Stat. Ann. art. 6701ℓ -1 upon charge of misdemeanor. <sup>2</sup> Possible under art. 6701d §46. Also possible under art. 6701ℓ -2 felony (upon probable cause). <sup>3</sup> Id.
Utah	Δ <sup>1</sup>	▲ <sup>2</sup>	▲ <sup>3</sup>	None	<sup>1</sup> Possible under Utah Code Ann. §41-6-44.10(c). <sup>2</sup> §26-15-4(20) provides for it. <sup>3</sup> Id.

## 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	
Vermont	▲ <sup>1</sup>	▲ <sup>2</sup>	▲ <sup>3</sup>	None	<sup>1</sup> Vt. Stat. Ann. tit. 23, §1203(d). <sup>2</sup> Tit. 23, §1203(e). <sup>3</sup> Id.
Virginia	None	Δ <sup>1</sup>	Δ <sup>2</sup>	None	<sup>1</sup> Possible under Va. Code Ann. §46-1-404. <sup>2</sup> Id.
Washington	▲ <sup>1</sup>	Δ <sup>2</sup>	Δ <sup>3</sup>	▲ <sup>4</sup>	<sup>1</sup> Wash. Rev. Code Ann. §46.20.308(1) requires BAC tests of drivers causing injury or death to another person. <sup>2</sup> Possible under §46.52.050 and §46.42.065. <sup>3</sup> Id. <sup>4</sup> <i>Supra</i> Note 1.
West Virginia	None	▲ <sup>1</sup>	▲ <sup>2</sup>	None	<sup>1</sup> W. Va. Code Ann. §17C-5B-1. <sup>2</sup> Id.
Wisconsin	▲ <sup>1</sup>	▲ <sup>2</sup>	▲ <sup>3</sup>	▲ <sup>4</sup>	<sup>1</sup> Wis. Stat. Ann. §343.305 (2)(am). There must be a validly issued citation before a law enforcement officer can subject the driver to such test. OAG 93-78. <sup>2</sup> §346.71(2). <sup>3</sup> Deceased pedestrian tested if over 16 yrs. of age and dies within 6 hrs. of accident. Id. <sup>4</sup> §343.305(2)(am).
Wyoming	None	Δ <sup>1</sup>	Δ <sup>2</sup>	None	<sup>1</sup> Presumably required under Wyo. Stat. Ann. §31-5-111. <sup>2</sup> Id.
Washington, DC	▲ <sup>1</sup>	▲ <sup>2</sup>	▲ <sup>3</sup>	▲ <sup>4</sup>	<sup>1</sup> D.C. Code Encycl. Ann. §40-1002(b). 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 &amp; District of Columbia</i> 358 A. 2d 314 (D.C. App. 1976). <sup>2</sup> Id. <sup>3</sup> Id. <sup>4</sup> Id.

## 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	
Puerto Rico	▲ <sup>1</sup>	▲ <sup>2</sup>	▲ <sup>3</sup>	▲ <sup>4</sup>	<p><sup>1</sup>P.R. Laws. Ann. tit. 9, §1043(c), provides for a PBT.</p> <p><sup>2</sup>Tit. 9, §1043(a) provides for each test (blood test) to be performed within 4 hours of the accident.</p> <p><sup>3</sup>Id.</p> <p><sup>4</sup>Id.</p>
Virgin Islands	Δ <sup>1</sup>	None	None	None	<p><sup>1</sup>Such a requirement can be presumed from the wording of V.I. Code Ann. tit. 20, §493(b)(c).</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 tests exist in all jurisdictions, sixteen states, viz., Alaska, Florida, Hawaii, Kansas, Maine, Maryland, Massachusetts, New Mexico, North Carolina, Oklahoma, Pennsylvania, South Carolina, Texas, Vermont, Virginia, and Washington, do not provide for any urine test 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 tests is specifically reserved in each

state for persons who are medically qualified and duly certified. Police officers generally can only direct that blood be withdrawn from a defendant by recognized authorities in conformity with prescribed procedures.<sup>1</sup>

State laws vary with regard to the actual scope of police authority. Footnotes 1 to 7 denote the level of police authority. As Chart 4 shows, most of the states provide for the tests to be administered at the direction of the police officer (footnote 5). The extent of authority is relative to the nature of the specimen collected. The scope of authority is broadest in matters involving breath, and lowest regarding blood. The scope of authority is generally clear, except for the States of Illinois and Missouri, where statutory provisions regarding pertinent urinalysis seem unclear (footnote 7 on the chart). Authority to collect specimens of urine or breath for purposes of BAC tests often is implied in statutory provisions. These provisions invariably exempt the collection of such specimen from the rigorous blood sample procedures.

<sup>1</sup>Methods and standards regarding BAC tests, particularly that of blood, are specific and require mandatory compliance without exception. Evidence based on an improperly administered test is deemed prejudicial and any resulting conviction is subject to reversal. *State v. Dyer*, 233 S.E. 2d 309(W. Va. 1977).

## Chart 4/BAC Tests: Scope of Police Authority

State	Urine	Citation/Comment	Breath	Citation/Comment
Alabama	5	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, Ala.</i> 337 So. 2d 321 (Ala. 1976); <i>Lankford v. Redwing Carriers, Inc.</i> 344 So. 2d 515 (Ala. 1977).	5	§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. Cr. App. 1978) (overruling <i>Weaver v. City of Birmingham</i> 340 So. 2d 99 (Ala. Cr. App. 1976)).
Alaska	4		5	Alaska Stat. §28.35.031 §28.35.032
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 . . ."	5	§28.691(a); §28.692(e) allows the arresting officer to take breath specimen.
Arkansas	5	Ark. Stat. Ann. §75.1045(a). Specimen can be collected by police officers. §75.1045(c)(2). 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); §75.1046.	5	75.1045(a)(1)(2); specimen can be collected by police officers. §75.1046(b).
California	5	Cal. Motor Vehicle Code §13354.	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)(3). However, test results are admissible and competent only where defendant consents to taking of the test. §14-227a(b)(1).	2	§14-227a(b)(3). Consent of the defendant to undergo the test is a precondition for admissibility of the test results. §14-227a(b)(1).
Delaware	5	Del. Code Ann. tit. 1, §21-2741. Although only qualified personnel can administer the tests, police officer can obtain specimen. §21-2746.	5	§21-2741.

<sup>1</sup>Police officer directly authorized to test.

<sup>2</sup>A "certified" person including a police officer is authorized to test.

<sup>3</sup>Police officer is not authorized to test.

<sup>4</sup>No authority for anyone to test.

<sup>5</sup>Testing is possible under the "direction" of police officer.

<sup>6</sup>Other Statutory Provision.

<sup>7</sup>Unclear.

## Chart 4/BAC Tests: Scope of Police Authority

State	Urine	Citation/Comment	Breath	Citation/Comment
Florida	4		5	Fla. Stat. Ann. §322.261(2)(a)(b). However, a police officer can take a breath specimen.
Georgia	2	Ga. Code Ann. §68A-902.1. §68B-306 leads to such presumption inasmuch as urine and breath specimen can be taken by police officer. Also presumed from the fact that police officer can take blood specimen from unconscious defendant— <i>Smith v. State</i> , 238 S.E. 2d 698 (Ga. 1977).	1	Presumed from <i>W.R. Franklin v. The State</i> , 136 Ga. App. 47, 220 S.E. 2d 606 (1975); <i>Hunter v. State</i> , 141 Ga. App. 276, 233 S.E. 2d 252 (1977).
Hawaii	4	Hawaii Rev. Stat. §§286.151 and 286.154. Provides 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 three hours after the alleged violation of the DUI laws—§291-5. §321-161 provides for a standard chemical testing program.
Idaho	5	Idaho Code §49-352. However, police officer can take urine, breath and saliva specimen under §49-354.	5	§49-352. Specimen can, however, be taken by the police officer. §49-354.
Illinois	7	Although Ill. Ann. Stat. ch. 95½, §11,501(c)3 talks of urine tests—authority regarding urinalysis remains unclear.	1	Ch. 95½, §11-501.1(a) provides for 2 separate breath tests to be administered 15 or more minutes apart.
Indiana	2	Ind. Stat. Ann. §9-4-4.5.2	2	§9-4-4.5.2 now states that breathalyzer tests may also be performed "by a person using techniques and equipment approved by the Department of Toxicology of the Indiana University School of Medicine." Effective July 1, 1978.
Iowa	4	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.	5	§321B.4 authorizes the police officer in his or her capacity as a peace officer to take such specimen. Written request must be furnished.
Kansas	4	Kan. Stat. Ann. §8-1000.	5	§186.565(1).
Kentucky	5	Ky. Rev. Stat. Ann. §186.565(1).	2	§186.565(1).

<sup>1</sup>Police officer directly authorized to test.

<sup>2</sup>A "certified" person including a police officer is authorized to test.

<sup>3</sup>Police officer is not authorized to test.

<sup>4</sup>No authority for anyone to test.

<sup>5</sup>Testing is possible under the "direction" of police officer.

<sup>6</sup>Other Statutory Provision.

<sup>7</sup>Unclear.



## Chart 4/BAC Tests: Scope of Police Authority

State	Urine	Citation/Comment	Breath	Citation/Comment
Louisiana	2&5	Although the tests are given at the direction of a police officer, §32.663 provides for testing by certified persons including officers.	2	§32.663 and §32.664.
Maine	4	Me. Rev. Stat. Ann. tit. 29, §1312 does not provide for such test.	5 as well as 1	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. Ann. Code ch. 164, Acts 1977, effective July 1, 1977 rewrote the certification in subsection (1) of subsection 1 of 16-205.1 eliminating references to urine.	2	§16-205.1(d)(1).
Massachusetts	4		5	Mass. Gen. Laws Ann. ch 90, §24(b). However, for purposes of evidence, consent of person tested must be there. Ch. 90, §24(e).
Michigan	5	Mich. Comp. Laws Ann.(3)(2); §9.2325(1)(2).	5	§§9.2325(3)(2). Samples also can be taken by officer. §9.2325(1)(2). In prosecutions other than DUI, breathalyzer test can be compelled and results admitted in evidence without derogation of consitutional right against self-incrimination or as offensive to sense of justice. <i>People v. Kenn</i> , 56 Mich. App. 84 (1974).
Minnesota	5	Sec. 169.123 Subd. 2. However, the police officer can collect specimen. §169.123 Subd. 3.	5	Sec. 169.123 subd. 2. However, 169.123 Subd. 3 authorizes collection of breath specimen.
Mississippi	5	Miss. Code Ann. §63-11-5. Police officer has to ensure privacy as well as accuracy while collecting specimen. §63-11-11.	5	§63-11-5.
Missouri	7	Mo. Ann. 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.

<sup>1</sup>Police officer directly authorized to test.

<sup>2</sup>A "certified" person including a police officer is authorized to test.

<sup>3</sup>Police officer is not authorized to test.

<sup>4</sup>No authority for anyone to test.

<sup>5</sup>Testing is possible under the "direction" of police officer.

<sup>6</sup>Other Statutory Provision.

<sup>7</sup>Unclear.

## Chart 4/BAC Tests: Scope of Police Authority

State	Urine	Citation/Comment	Breath	Citation/Comment
Montana	5	Montana Rev. Codes Ann. tit. 61-8-402(1). Police can collect specimens under tit. 61-8-405 (1) and (5).	2	Tit. 61-8-402(1). Police officer can collect specimens. Tit. 61-8-405 (1).
Nebraska	2	Neb. Rev. Stat. §39-699.11.	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. ch. 262-A:69-i(ii).	5	Ch. 262-A:69-i(iii). Requirements of this section are mandatory and not permissive. <i>State v. Gallant</i> , 108 N.H. 72, 227 A 2d 597 (1967).
New Jersey	5	N.J. Stat. Ann. §39:4-50.2.	5	§39:4-50:2.
New Mexico	4		5	N.M. Stat. Ann. ch. 66-8-107.
New York	5	N.Y. Veh. & Traf. Law §1194.1. However, specimen can be collected by a police officer. Id. §7a.	5	§1194.1. Collection of specimen by a police officer is permitted. Id. §7a.
North Carolina	4		5	N.C. Gen. Stat. §20.16.2(a).
North Dakota	5	N.D. Cent. Code §39-20-01. Collection of specimens possible as provided under 39-20-02.	5	§39-20-01. §39-20-02, however, makes collection of specimens possible.
Ohio	5	Ohio Rev. Code Ann. §4511.19.1(A). However, under §3701.143 a police officer may be authorized to perform such tests. Collection of specimen is allowed under §4511.19.	5	§4511.19.1(A). §3701.143 provides the possibility of any authorized police officer performing the test. Collection of specimen is allowed under §4511.19.
Oklahoma	4		5	Okla. Stat. Ann. tit. 47-§751. Collection of specimens is possible under 47-§752.
Oregon	6	Ore. Rev. Stat. §487.835. Test is possible only by consent of the arrested person.	5	§487.805.
Pennsylvania	4		2	Pa. Stat. Ann. §75-1547(a).

<sup>1</sup>Police officer directly authorized to test.

<sup>2</sup>A "certified" person including a police officer is authorized to test.

<sup>3</sup>Police officer is not authorized to test.

<sup>4</sup>No authority for anyone to test.

<sup>5</sup>Testing is possible under the "direction" of police officer.

<sup>6</sup>Other Statutory Provision.

<sup>7</sup>Unclear.

## Chart 4/BAC Tests: Scope of Police Authority

State	Urine	Citation/Comment	Breath	Citation/Comment
Rhode Island	2	R.I. Gen. Laws Ann. §31-27-2.1(a).	2	§31-27-2.1(a).
South Carolina	4		2	S.C. Code Ann. §56-5-2950(a).
South Dakota	5	S.D. Code §32-23-10; §32-23-14, however, allows a police officer to collect specimen.	5	§32-23-10. Specimen can be collected under §32-23-14.
Tennessee	5	Tenn. Code Ann. §59-1045.	5	§59-1045.
Texas	4	Tex. Rev. Civ. Stat. Ann. art. 6701 <i>ℓ</i> -5, §1. If such a test is performed with defendant's consent, the police officer possibly may collect specimen.	5&2	Art. 6701 <i>ℓ</i> .5, §3(c). Police officer can collect specimen. However, a police officer who is certified as Breath Test Operator can administer the test. Art. 6701 <i>ℓ</i> -5, §3(b).
Utah	5	Utah Code Ann. §41-6-44.10(a). Collection of specimen is allowed §41-6-44.10(e).	5	§41-6-44.10(a). Collection of specimen is allowed under §41-6-44.10(e).
Vermont	4		1	Vt. Stat. Ann. tit. 23, §1202. 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		6	Va. Code Ann. §18.2-268 ( <i>ℓ</i> -1).
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 (Wa. 1975).	5	Wash. Rev. Code Ann. §46.20.308. Specimen can be collected, however. §46.61.506(4).
West Virginia	5	W. Va. Code Ann. §17C-5A-1. However, police officer can collect specimen. §17C-5A-2.	5	§17C-5A-1. Collection of specimen is possible under §17C-5A-2.
Wisconsin	5	Wis. Stat. Ann. §343.305(a).	2	§343.305(1).
Wyoming	5	Wyo. Stat. Ann. §31-6-102.	5	§31-6-102(a). However, the police officer can take breath specimens. §31-6-105(b).

<sup>1</sup>Police officer directly authorized to test.

<sup>2</sup>A "certified" person including a police officer is authorized to test.

<sup>3</sup>Police officer is not authorized to test.

<sup>4</sup>No authority for anyone to test.

<sup>5</sup>Testing is possible under the "direction" of police officer.

<sup>6</sup>Other Statutory Provision.

<sup>7</sup>Unclear.

## Chart 4/BAC Tests: Scope of Police Authority

State	Urine	Citation/Comment	Breath	Citation/Comment
Washington, DC	5	D.C. Code Encycl. Ann. §40-1002. However, specimen can be collected by an officer. §40-1003. Urine specimen is admissible at the trial for DWI despite absence of medical supervision at time of taking of test. <i>J.E. Davis v. District of Columbia</i> 247 A. 2d 417 (D.C. App. 1968).	5	§40-1002. Collection of specimen is however, authorized. §40-1003.
Puerto Rico	2	P.R. Laws Ann. tit. 9, §1043(d).	2	Tit. 9, §1043(d).
Virgin Islands	5	V.I. Code Ann. tit. 20, §493(d). Collection of specimen is possible, however. Id. para. (b).	5	Tit. 20, §493(d). Collection of specimen is possible. Id. para. (b).

<sup>1</sup>Police officer directly authorized to test.

<sup>2</sup>A "certified" person including a police officer is authorized to test.

<sup>3</sup>Police officer is not authorized to test.

<sup>4</sup>No authority for anyone to test.

<sup>5</sup>Testing is possible under the "direction" of police officer.

<sup>6</sup>Other Statutory Provision.

<sup>7</sup>Unclear.

## V. BAC Tests: Defendant's Options

The issue of a defendant's choice (Chart 5) of the BAC test to be initially administered, and the possible availability of supplemental tests is an important aspect of implied consent laws. Although states invariably prescribe chemical tests of breath, urine, or blood (and also of saliva or other bodily substances), most states seem to leave the choice of designating the initial BAC test to the police officer. Some states, however, specifically leave the choice with the defendant, i.e., Maine, Oklahoma, Oregon, and Virginia. Most states also provide for supplementary BAC tests at the defendant's option. The defendant's options regarding the choice of supplementary tests are unclear in states such as Illinois and Indiana. Although 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., hemophilia, diabetes, or users of anticoagulants, most states probably would accede to a defendant's refusal on such grounds.

In offering or permitting the rejection of a choice of tests, the availability of test facilities and the time and circumstance of the arrest are considered. For example, Washington, D.C., assures the defendant a choice of tests where such choice is available and possible. Care gener-

ally is exercised to ensure that the choice of tests not effect the nature of the outcome. To insure 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.<sup>1</sup>

All states seem to offer the possibility of supplementary tests. As Chart 5 illustrates, this possibility is deemed a matter of right in Alaska, Arizona, Arkansas, Connecticut, Delaware, Iowa, Kansas, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, New Hampshire, New Jersey, North Carolina, Oregon, South Carolina, and Texas. In others, the possibility of supplementary tests exists, but the absence of such test results does not in any way affect the competence of official test results for purposes of trial evidence.

In almost all states, the supplemental test is available at the expense of the defendant. 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 dependant upon such supplemental tests 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. However, in some states, for example Maryland and 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.

<sup>1</sup>The 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. Exists in so far as the defendant can object to blood test. However, a 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). <i>Hill v. State</i> , 366 So. 2d 318 (Ala. 1979).	Δ	§32-5-193(a)(5). Provides for introduction of "any other competent evidence" bearing upon the issue of DUI; expense of the added test to be borne by the defendant. 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> , <i>supra</i> .
Alaska	▲	Alaska Stat. §28.35.031. Statutes do not explicitly grant right to refuse a breathalyzer test. <i>Wirz v. State</i> 577 P. 2d 227 (Alaska 1978). No blood test without defendant's consent except where Cr. Pr. Rule 16(c)(1)(VII) applies. <i>Layland v. State</i> , 535 P. 2d 1043 (Alaska 1975). Results of routine medical BAC test are, however, generally admissible.	Δ	§28.35.003(e). Attempting and failing to secure another test is admissible as evidence. However, such failure will not preclude the admission of evidence relating to the test taken at the direction of the law enforcement officer. <i>Sullivan v. Municipality of Anchorage</i> , 577 P. 2d 1070 (Alaska 1978).
Arizona	None	Ariz. Rev. Stat. Ann. §28.691. Law enforcement agency designates test.	▲	State's interference with the accused's right to supplemental test violates due process. State ex rel. <i>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 395 (1977); <i>Smith v. Cada</i> , 114 Ariz. 510, 562 P. 2d 390 (1977). Exists for tests other than breathalyzer test.
Arkansas	None	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.	Δ	Person must be advised of this right. §75.1045(c)(3). However, cost is borne by the defendant. §75.1045(a). The refusal of a law enforcement officer to advise such person of his right to supplemental or additional test, results in preclusion of the evidence based on use of such tests. §75.1045(c)(3).
California	▲	Cal. Motor 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).	Δ	§13354(b).

## Chart 5/BAC Tests: Defendant's Options

State	Choice of Tests	Citation/Comment	Supplemental Test	Citation/Comment
Colorado	▲	Colo. Rev. Stat. Ann. §42-4-1202(3)(a). Provides that if the defendant requests that the said chemical test be a blood test then "the test <i>shall be</i> 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.	Δ	§42-4-1202(2)(d).
Connecticut	▲	Conn. Gen. Stat. Ann. §14-227b. Moreover, such tests can also be avoided on valid medical ground. §47-227b.	Δ	§14-227a(b)(5) & (6). In fact, a 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).
Delaware	None	Del. Code Ann. tit. 21, §2741 and §4177(a) do not require a police officer to permit a person arrested for DUI to take a blood test, but rather provides 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).	Δ	<i>Slaughter v. State</i> , 322 A. 2d 15 (Del. 1974) upheld the defendants' right to introduce "evidence" (of his own) to show inadequacy or mistakes of official test(s).
Florida	▲	Fla. Stat. Ann. §322.261(h).	Δ	§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. Failure to advise defendant of right to 3 types of chemical tests set forth in Unif. Rules of Road, (blood, urine, and breath), makes the results of a breath test inadmissible. <i>Hulsey v. State</i> , 138 Ga. App. 221, 225 S.E. 2d 752 (1976).		§68A.902.1(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).
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	▲	To the extent that Idaho Code §49.352 implies the existence of such choice.	Δ	§49-355 permits such additional test and §49-1102(b)(4) provides for admission of such supplemental tests.

## Chart 5/BAC Tests: Defendant's Options

State	Choice of Tests	Citation/Comment	Supplemental Test	Citation/Comment
Illinois	Unclear	Under Ill. Ann. Stat. ch. 95½, §11.501(C)(3). Choice can be blood, breath, urine or other bodily substances. Ch. 95½, §11.501.1(a) requires taking of a test or chemical analysis of breath alone. Ch. 95½, §11.501(d) talks only of blood or breath test.	Δ	Ch. 95½, §11.501.1(a)(8). Supplemental test to be at defendants' expense.
Indiana	Unclear	Ind. Stat. Ann. §9-4-45-2 defines chemical test to mean an analysis of the breath, blood, urine or other bodily substance . . . "including a 'Breathalyzer' test".	None	
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.	Δ	§321B.4, in fact, specifically talks of independent chemical test or tests.
Kansas	▲	Kan. Stat. Ann. §8-1001. Provides for a chemical test of blood or breath. Not clear whether a defendant has any option regarding the test. However, blood sample taken by deputy coroner without consent of the defendant was held inadmissible. <i>State v. Gordon</i> , 219 Kan. 643, 647, 549 P. 2d 886 (1976).	Δ	§8-1004 points out that: Supplemental test is a matter of right and the evidentiary value of the "official" tests is nullified if such right to supplemental tests is denied. <i>Id.</i> Moreover, §8-1006 also assures the submission/introduction of additional evidence by the defendant. However, test operator is not required to inform person tested of rights to independent test. <i>City of Shawnee v. Gruss</i> , 2. Kan. 2d 131, 134, 576 P. 2d 239 (1978).
Kentucky	None	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).	Δ	§189.520(5). Provides for admission of other competent evidence. Also §189.520(8) provides for the person tested to have additional tests taken.
Louisiana	None	La. Civ. Code Ann. §32.661 seems to leave no such choice since the officer is empowered to "designate which of the tests shall be administered".	Δ	§32.662.C provides for introduction of supplemental test results and §664.B makes opportunity for supplemental tests a right.



## Chart 5/BAC Tests: Defendant's Options

State	Choice of Tests	Citation/Comment	Supplemental Test	Citation/Comment
Maine	▲	Me. Rev. Stat. Ann. tit. 29, §1312 specifically states that the "said accused" (defendant) "shall select and designate one of the tests" (breath or blood).	None	Tit. 29, §312.5.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. Ann. Code art. 16, §205.1(a)(1). Choice is between blood and breath tests.	Δ	If the defendant requests a test, the officer must have one administered under Md. Ann. Code, Courts & Jud. Proc., art. 10.304(d). Also under that subsection, 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 art. 10-307(a).
Massachusetts	None	Mass. Gen. Laws Ann. ch. 90, §24 provides only for chemical test or breath analysis.	Δ	It is a right ensured under ch. 263, §5A, as well as under ch. 90, §24(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. Comp. Laws Ann. §9.2325(l)(1) and (2). Choice as to which test is to be administered lies originally with police officer, and not with the defendant. However, the defendant, thereafter, may refuse the test (and face penalties) or take the test suggested and demand and take supplemental test. <i>Collins v. Secy. of State</i> , 187 N.W. 2d 423, 384 Mich. 656, effg. 19 Mich. App. 498 (1971).	Δ	Under §9.2325(1) motorist has right to be given the opportunity within a reasonable time to take supplemental test. <i>People v. Lambert</i> , 235 N.W. 2d 338, 395 Mich. 296 (1975).
Minnesota	▲	Minn. Stat. Ann. §169.123. No action can be taken against a person for declining to take a blood test unless either a breath or urine test is available.	Δ	§169.123, subd. 3. The expense is borne by the defendant, however.
Mississippi	None	Presumably police officer is to designate the test or tests (Miss. Code Ann. §63-11-5). However, the existence of those modes of tests—viz. blood, breath, and urine—suggest that choice of test might be possible.	Δ	§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.

## Chart 5/BAC Tests: Defendant's Options

State	Choice of Tests	Citation/Comment	Supplemental Test	Citation/Comment
Missouri	▲	Although breath test alone is noted under Mo. Ann. Stat. §577.020, §577.030 accords equal status, for the purpose of evidence, to urine, blood or saliva test results, implying existence of such choices.	Δ	§577.020.3 and §577.030.3.
Montana	None	Mont. Rev. Codes Ann. §61-8-402(1).	Δ	§61-8-405(2) provides for such supplemental tests at own expense, and §61-8-404(3) authorizes their admission as evidence.
Nebraska	▲	Neb. Rev. Stat. §399-669.09. If the test shall be of the defendants' blood or urine, the defendant can choose either. However, accused waives right to choose the type of test by voluntarily taking either (the blood or urine test). <i>State v. Wahrman</i> , 199 Neb. 337, 258 N.W. 2d 818 (1977).	Δ	In fact, §39-669-09 specifically states that such supplemental tests must be permitted. Refusal of such 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). <i>Supra</i> .
Nevada	▲	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 had. §484.383.5. Persons afflicted by hemophilia can also refuse blood test. However, if the issue is the presence of 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.	Δ	§484.391 provides for the introduction of additional evidence, if competent, which could be based on such tests. §484.391 provides for such tests at own expense.
New Hampshire	None	N.H. Rev. Stat. Ann. §262-A:69-a. "Administered at the direction of a law enforcement officer." §262-A:69-C leaves choice of tests with the officer. Refusal of blood test is possible only on medical grounds. §262-A:69-4. See <i>Hallet v. Johnson</i> , 111 N.H. 152, 276 A. 2d 926 (1971).	Δ	§262-A:69-C makes the appraisal of this fact (to the defendant) by the police officer a pre-requisite for admissibility of the official test results as evidence. Thus, the opportunity for supplemental tests is a right to the defendant. §262-A:63 also provides for their admissibility as evidence. §262-A:69J also allows for the admission of "other competent evidence."

## Chart 5/BAC Tests: Defendant's Options

State	Choice of Tests	Citation/Comment	Supplemental Test	Citation/Comment
New Jersey	▲	A general reading of N.J. Stat. Ann. §39:4-50.1 and §39:4-50.2, suggests that such choice exists after the breathalyzer test is taken. Defendant, however, has no statutory right to refuse to submit to breathalyzer test. <i>State v. Gormley</i> , 139 N.J. Super. 556, 354 A. 2d 674 (1976).	Δ	§39:4-50.2(C). It is a statutory right, and noncompliance could vitiate a conviction for DUI, if based solely on chemical analysis of state. <i>State v. Hudes</i> , 128 N.J. Super, 589, 321 A. 2d 275 (1974).
New Mexico	None	N.M. Stat. Ann. §66-8-107B. Appears to preclude such choice.	Δ	§66-8-109.B and E. (Also §66-8-110.D). Although 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 such supplemental test when defendant opts for it. §66-8-109.E.
New York	None	N.Y. Veh. & Traf. Law §1194. Seems specific that such test is administered at the direction of a police officer.	Δ	§1194.8. Such tests are admissible as evidence under sub-para. 9.
North Carolina	None	N.C. Gen. Stat. §20-16.2(a) authorizes the law enforcement officer to designate the tests.	Δ	§20-16-2(a)(3) talks of such supplemental test or tests. The police officer has to inform the defendant of such right and must assist in contacting someone qualified to administer the test. §20-139-1(d).
North Dakota	None	N.D. Cent. Code §39-20-01 provides that the arresting officer "shall" 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, defendants' 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).	Δ	§39-20-02 provides for such supplemental test. §39-20-09 allows their admission into evidence.
Ohio	None	Ohio Rev. Code Ann. §4511.19. The law enforcement agency designates the test.	Δ	§4511.19(c).
Oklahoma	▲	Okla. Stat. Ann. tit. 47, §751. States clearly that the test or tests (of defendant's blood or breath) be at defendant's election.	Δ	Tit. 47, §752. 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. Id. Tit. 47, §757 also provides for such tests as "other competent evidence."

## Chart 5/BAC Tests: Defendant's Options

State	Choice of Tests	Citation/Comment	Supplemental Test	Citation/Comment
Oregon	▲	Ore. 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 of blood, urine or saliva under §487.835.	Δ	§487.810. Test is at own expense, but 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).
Pennsylvania	None	Under Pa. Stat. Ann. tit. 75, §1547. If a person cannot provide sufficient breath specimen, a blood test is possible. But otherwise no choice involved.	Δ	Tit. 75, §1547(h) and Tit. 75, §1547(e) provide for the introduction of such supplemental test results into evidence.
Rhode Island	None	Although R.I. Gen. Laws Ann. §31-27-2.1(a) talks of a chemical test of breath, blood, and/or urine, it seems that the defendant is required to take the test that the officer seeks to administer.	Δ	§31-27-2.1(a). Also, §31-27-2.1(c)4 provides for the introduction of other competent evidence.
South Carolina	Δ	Only breath test is provided for under S.C. Code §56-5-2950(a). But persons refusing breath test are entitled to reasonable opportunity to obtain blood test. <i>State v. Leans</i> , 266 S.C. 45, 221 S.E. 2d 524 (1976).	Δ	§56-5-2950(a). Police officer has to assist the defendant in contracting a qualified person to administer the test. However, such assistance is requested to be given only to person whose breath was previously tested by law enforcement officer, <i>State v. Lewis</i> , 266 S.C. 45, 221 S.E. 2d 524 (1976).
South Dakota	None	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, 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).	Δ	S.D. Code §32-23-15. The obligation is with the requesting party (defendant). <i>Holland v. Parker</i> , 84 S.D. 691, 176 N.W. 2d 154 (1970).
Tennessee	None	Tenn. Code Ann. §59-1045. Provides for a test which happens to be a blood test: Presumably alternate test is possible for hemophiliac, etc., but defendant has not choice regarding it.	Δ	§59-1049 provides for such supplemental test at defendant's expense. However, the test is to be performed at a place certified for the purpose.
Texas	▲	Tex. Rev. Civ. Stat. Ann. art. 67011-5, §1 provides for such choice; §3(a) of the same article recognizes such choice for evidentiary purposes.	Δ	Art. 67011-5, §3(d). Test has to be within two hours of the arrest. Police officers' refusal to allow such additional or supplemental test is admissible.

## Chart 5/BAC Tests: Defendant's Options

State	Choice of Tests	Citation/Comment	Supplemental Test	Citation/Comment
Utah	None	Utah Code Ann. §41-6-44.10(a). Defendant has no right to select such tests. A peace officer determines tests. Utah's implied consent law also requires that a person arrested for DUI give consent to a breathalyzer test. The law does not recognize the privilege of imposing any conditions as a prerequisite. <i>Moran v. Shaw</i> , 580 P. 2d 241 (Utah 1978).	Δ	§41-6-44-10(f) provides for such supplementary test at own expense.
Vermont	None	Vt. Stat. Ann. Act. No. 267 of 1969 gives officer choice of selecting the test. Op. Atty. Gen. No. 537F (1970). However, 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).	Δ	Tit. 23, §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 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.	None	But seems possible under §18.2-268(i), which provides for admission of other relevant evidence bearing upon the issue of DUI.
Washington	None	Wash Rev. Code Ann. §46.20.308. States that: unless the defendant is unconscious, the test is only of breath. The requirement (only of breath) is unequivocal. <i>Albright v. Dept. of Motor Vehicles</i> , 81 Wa. 2d 609, 503 P. 2d 739 (1972).	Δ	§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).
West Virginia	▲	Exists in the event a law enforcement officer does not subject the defendant to any BAC test. Under W. Va. Code Ann. §17C-5A-6, defendant has a right to demand that a sample of breath, blood or urine be taken for BAC test.	Δ	§17C-5A-2 provides for such supplemental test at "own expense".
Wisconsin	None	Wis. Stat. Ann. §343.305(1). Leaves the choice of designating the tests with the officer. A motorist's refusal to take a breath test because he considered it to be unreliable (even though based on his experience relating to its unreliability) was not regarded as a reasonable refusal. <i>City of Madison v. Bardwell</i> , 266 N.W. 2d 618 (Wis. 1978).	Δ	§343.305(5).

## Chart 5/BAC Tests: Defendant's Options

State	Choice of Tests	Citation/Comment	Supplemental Test	Citation/Comment
Wyoming	▲	Wyo. Stat. Ann. §31-6-102. The person arrested is given the choice to have a test taken and can take a test at the expense of the arresting agency. However, the arrested person does not have an inherent right to such a test. <i>Harrimer v. Town of Jackson</i> 524 P. 2d 884 (Wyo. 1974). Persons afflicted with hemophilia are exempted from blood tests. §31-6-104(C).	Δ	§31-6-105(d). Provides opportunities for supplemental tests.
Washington, DC	▲	D.C. Code Encycl. Ann. §40-1002, 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 religious or medical grounds.	Δ	§40-1003. Assures such supplemental tests.
Puerto Rico	▲	Although P.R. Laws Ann. tit. 9, §1043(a) states clearly that the defendant "shall submit . . . to the analysis that any peace officer may require from him," court has held that the defendant is entitled to choose between the blood, breath or urine analysis. <i>People v. Ortega Otero</i> , 67 P.R. 465 (1969).	Δ	Tit. 9, §1043(f). Assures supplemental tests. Portions of the blood or urine samples collected by officials are made available to the defendant for such supplemental analysis by a chemist of defendant's choice.
Virgin Islands	None	Such choice does not seem to exist.	None	Supplemental test is not specifically provided for.

## 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 content found in the blood. The standards for interpreting the results of the chemical analysis of blood, urine, breath, or other bodily substances, where pertinent, are provided by statute. Almost invariably, each of the 53 jurisdictions studied provide [in conformity with the UVC 11-902.1 (b)(3)] that an alcohol/blood ratio of 0.10 percent, or more, will create a presumption that the person was under the influence of alcohol. The amount of alcohol is targeted at 0.10 percent on the basis of research which is presumed to have shown that no person can drive safely with that amount or more of alcohol, in the bloodstream. A few states (e.g., Florida, Maryland, and the Virgin Islands), regard a blood/alcohol ratio of 0.10 percent or more as presumptive of impairment of one's ability to drive a motor vehicle. Some states, like Michigan, New York and Maine use even lesser BAC percentages (0.6 to 0.9%) as evidence of such impairment to operate a motor vehicle.

Delaware, Florida, Minnesota, Missouri, Nebraska, New York, New Hampshire, North Carolina, Oregon, South Dakota, Utah, Vermont and Wisconsin regard a 0.10 percent blood-alcohol ratio illegal *per se*. 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 w/v. This statute represents a significant improvement over the traditional DUI laws in several re-

spects. 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 as an objective measure of impairment of the ability to drive; and (2) the rapid improvement in breath alcohol measurement technology and chemical testing programs.

Recognizing the BAC as a valid measure of impairment not only benefits and improves prosecution of drunk drivers through *per se* laws, but 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 within the police station and at the roadside.

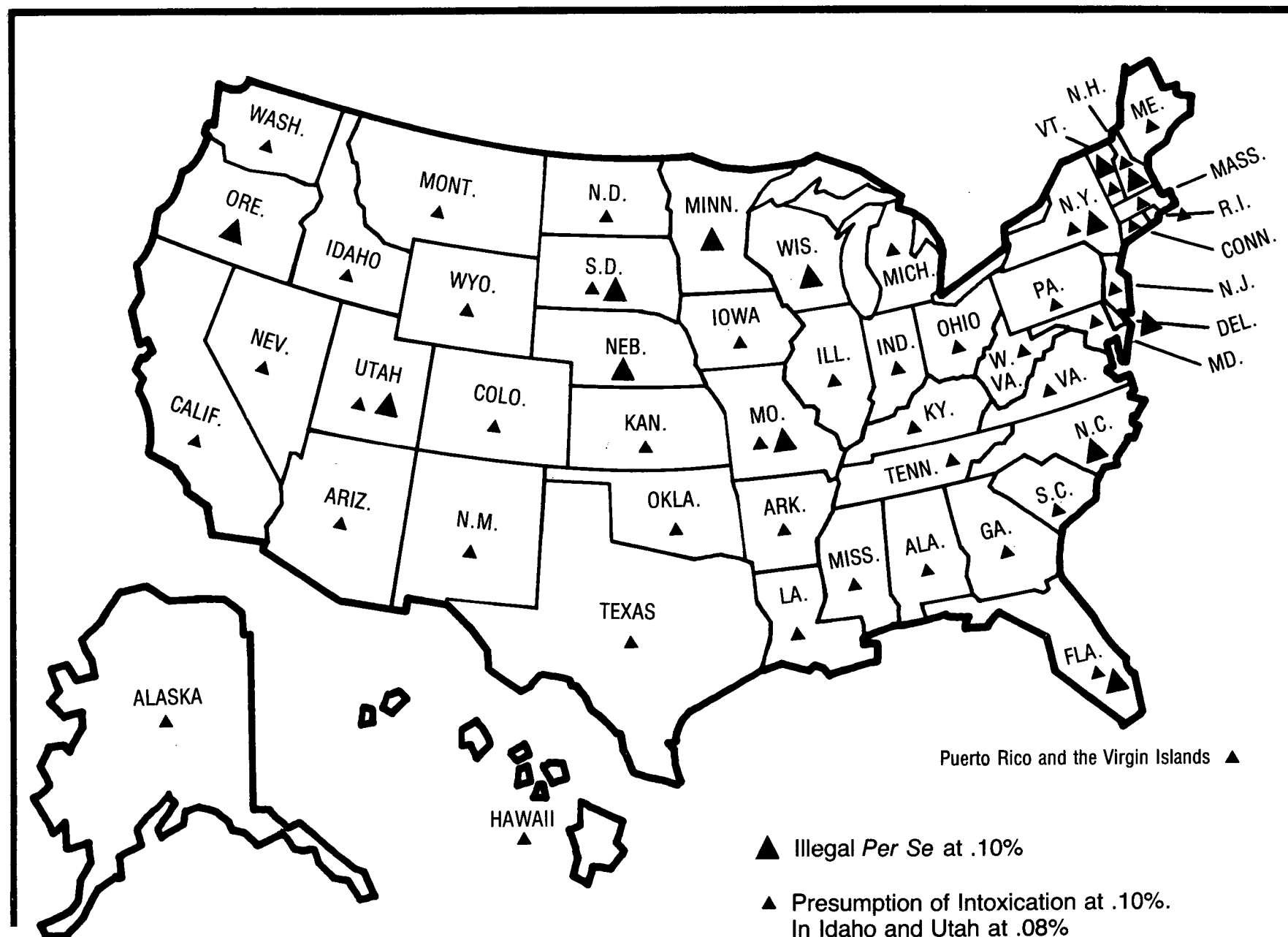
The *per se* law is not intended to completely supplant existing DUI laws. Police agencies and the courts can and do apprehend and convict drivers with BACs less than 0.10 percent. Though not over 0.10 percent, many drivers in the 0.05–0.10 percent BAC range are significantly impaired and can be charged under traditional DUI laws. Also, where chemical test results are not obtained, prosecution will be made under the traditional DUI laws.

*Per se* laws, viewed both as an improvement and complement to the driving while intoxicated statute, generally attract close judicial scrutiny regarding their specificity.<sup>1</sup> Nonetheless, most courts accept the *per se* provision as constitutional.<sup>2</sup> Map 2, graphically depicts the evidentiary value of the different percentage levels of the BAC.

<sup>1</sup>In *People v. LaPlante*, 81 Misc. 2d 34, 365 N.Y.S. 2d 932 (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 acquired only limited authority.

<sup>2</sup>See *Cox v. State*, Del. Supr., 281 A.2d 606 (1971), and *Greaves v. State*, Utah Supr., 528 p. 2d 805 (1974).

## Map 2/Illegal *Per Se* and Presumptive BAC Laws: May 31, 1979





## Chart 6/BAC Levels as Evidence in State Courts

State	Presumption at .10%	Citation/Comment	Illegal per se at .10%	Citation/Comment
Alabama	▲	Ala. Code tit. 1, §32-5-193(a)(3). The section is contrary to common law and must be strictly construed. <i>Weaver v. City of Birmingham</i> , 340 So. 2d 99 (Ala. App. 1976). However, neither the State nor a city, but the law enforcement agency alone, designates which test is to be used.		
Alaska	▲	Alaska Stat. §28-35.03(3).		
Arizona	▲	Ariz. Rev. Stat. Ann. §28-92(B)(3).		
Arkansas	▲	Ark. Stat. Ann. §75-1031.1(3).		
California	▲	Cal. Motor Veh. Code §23126(3).		
Colorado	▲	Colo. Rev. Stat. Ann. §42-4-1202(2)(c); §18-3-106(c).		
Connecticut	▲	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.		
Delaware			▲	Del. Code Ann. tit. 21, §4177(b). Test samples can be withdrawn within 4 hours of the alleged offenses.
Florida	▲	Fla. Stat. Ann. §322.262(c). Regards such percentage as <i>prima facie</i> evidence of impairment of faculties.	▲	§316.193; §322.262(c). §316.193 making it unlawful "for any person with a blood alcohol level of 0.10%, or above to drive . . . any vehicle within the state is constitutional and constitutes a reasonable method of prohibiting intoxicated drivers from Florida highways". <i>State v. Hamza</i> , 342 So. 2d 80 (Fla. 1977); <i>Roberts v. State</i> , 329 So. 2d 296 (Fla. 1976).
Georgia	▲	Ga. Code Ann. §68A-902.1(b)(3).		

## Chart 6/BAC Levels as Evidence in State Courts

State	Presumption at .10%	Citation/Comment	Illegal <i>per se</i> at .10%	Citation/Comment
Hawaii	▲	Hawaii Rev. Stat. §291.5(3). However, it is possible to introduce other competent evidence bearing upon the issue.		
Idaho	▲	Idaho Code §49-1102(b)(1). Presumption is at less than 0.10%. Presumes intoxication at more than 0.08%. §49-1102(b)(2).		
Illinois	▲	Ill. Ann. Stat. ch. 95½, §11-501(a)3; and ch. 95½, §11-501.1(a)(7).		
Indiana	▲	Ind. Stat. Ann. §9-4-1-54(4)(A). While less than 0.10%, but more than 0.05% constitutes relevant evidence, (as to whether the defendant was intoxicated). 0.05% or less constitutes <i>prima-facie</i> evidence that the defendant was not intoxicated. §9-4-1-54(B) and (C).		
Iowa	▲	Iowa Code Ann. §321.281.		
Kansas	▲	Kan. Stat. Ann. §8-1005. Presumption at 0.10% or more, while less than 0.10% leads to presumption that the defendant was not under the influence of intoxicating liquor.		
Kentucky	▲	Ky. Rev. Stat. Ann. §189.520(4)(c).		
Louisiana	▲	La. Civ. Code Ann. §662A.1.c.		
Maine	▲	Me. Rev. Stat. Ann. tit. 29, §1312.5.c makes 0.10% BAC as <i>prima-facie</i> evidence of intoxication while 0.6 to 0.9% BAC is evidence of impairment.		
Maryland	▲	Md. Code Ann., Cts. & Jud. Proc., §10, §307. 0.10% is taken as <i>prima-facie</i> evidence of impairment, while 0.15% is taken as <i>prima-facie</i> evidence of intoxication.		
Massachusetts	▲	Mass. Gen. Laws Ann. ch. 90, §24(e).		

## Chart 6/BAC Levels as Evidence in State Courts

State	Presumption at .10%	Citation/Comment	Illegal <i>per se</i> at .10%	Citation/Comment
Michigan	▲	Mich. Comp. Laws 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			▲	Minn. Stat. Ann. §169.121 Subd. 1(d); and as well as §169.123. Subd. 5a.
Mississippi	▲	Under Miss Code An. §63-11.39(b), a BAC count of 0.10% is accepted as presumption of "under the influence of intoxicating liquor", while a 0.15% BAC gives rise to a presumption that the person was intoxicated.		
Missouri	▲	Mo. Ann. Stat. §577.030. States that 0.10% or more is <i>prima-facie</i> evidence of intoxication.	▲	But, §577.012 states that a person <i>shall not</i> drive a motor vehicle when he has 0.10% or more by weight of alcohol in his or her blood.
Montana	▲	Mont. Rev. Codes Ann. §61-8-401(3)(c).		
Nebraska			▲	Neb. Rev. Stat. §39-669.07.
Nevada	▲	Nev. Rev. Stat. §484.381.1(c).		
New Hampshire	▲	N.H. Rev. Stat. Ann. ch. 262-A:63. States such percentage to be <i>prima-facie</i> evidence of intoxication.	▲	Ch. 262:40all makes a BAC level of 0.5% (as defined in RSA 262-A:63) on any person under the age of 18 as illegal <i>per-se</i> leading to suspension of license or right to operate a motor vehicle for 3 months.
New Jersey	▲	N.J. Stat. Ann. §39:4-50.1(3).		
New Mexico	▲	N.M. Stat. Ann. ch. 66-8-110B.(3).		
New York	▲	N.Y. Veh. & Traf. Law, §1192.1 and 3. Leaves room for using even lower percentage for DUI convictions under the theory of impairment of the ability to operate a motor vehicle or being in an intoxicated condition.	▲	§1192.2.

## Chart 6/BAC Levels as Evidence in State Courts

State	Presumption at .10%	Citation/Comment	Illegal per se at .10%	Citation/Comment
North Carolina			▲	N.C. Gen. Stat. §20-138(b) and §20-17(2).
North Dakota	▲	N.D. Cent. Code §39-20-07.3.		
Ohio	▲	Ohio Rev. Code Ann. §4511.19(B).		
Oklahoma	▲	Okla. Stat. Ann. tit. 47, §756(c).		
Oregon			▲	Ore. Rev. Stat. §487.540(a); §487.545(2).
Pennsylvania	▲	Pa. Stat. Ann. tit. 75, §1547(d)(3).		
Rhode Island	▲	R.I. Gen. Laws Ann. §31; 27-2.1(c)3.		
South Carolina	▲	S.C. Code Ann. §56-5.2950(b)(3).		
South Dakota	▲	S.D. Code §32-23-7(3).	▲	§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	▲	Tenn. Code Ann. §59-1047.		
Texas	▲	Tex. Rev. Civ. Stat. Ann. art. 6701 §-5, §3(a).		
Utah	▲	Utah Code Ann. §41-6-44(b)3. Presumption of intoxication is at .08%.	▲	§41-6-44.2(a).
Vermont	▲	Vt. Stat. Ann. tit. 23, §1204(1)(3).	▲	Tit. 23, §1201(1).
Virginia	▲	Va. Code Ann. §18.2-269(3).		
Washington	▲	Wash. Rev. Code Ann. §46.61.506(c).		
West Virginia	▲	W. Va. Code Ann. §17C.-5A-5(c).		
Wisconsin			▲	Wis. Stat. Ann. §346.63(4).
Wyoming	▲	Wyo. Stat. Ann. §31-5-233(b)(iii).		

## Chart 6/BAC Levels as Evidence in State Courts

State	Presumption at .10%	Citation/Comment	Illegal per se at .10%	Citation/Comment
Washington, DC	▲	D.C. Code Encycl. Ann. §40-609a(3). While, tit. 40, §100.2 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>W.G. Murray v. United States and District of Columbia</i> 358 A. 2d 314 (D.C. App. 1976).		
Puerto Rico	▲	P.R. Laws Ann. tit. 9, §1041(b)(3). Presumption has been lowered to 0.10% since July 1, 1975.		
Virgin Islands	▲	V.I. Code Ann. tit. 20, §493(b) and (c). 0.10% is admissible as <i>prima-facie</i> evidence of impairment, as well as <i>prima-facie</i> evidence that the person was intoxicated. However, for offenders below 21 yrs. of age—a BAC level of 0.5% is accepted as <i>prima-facie</i> evidence of impairment. Tit. 20, §493(c).		

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## VII. Driver Screening, Rehabilitation and Sanctions

Chart 7 sums up the survey of alcohol and highway safety laws with an examination of the available provisions regarding problem drinker driver screening and the post-conviction phase of punishment and rehabilitation. Many of these new changes were the result of NHTSA's Alcohol Safety Action Projects (ASAP).

Treatment of alcoholics and drug addicts increasingly is emphasized as an alternative to traditional penalties which have not proved particularly successful in many instances. 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 replaced existing punitive laws; the traditional penalties of fines and license suspension continue to apply.

Alabama, Arizona, Colorado, Connecticut, Indiana, Massachusetts, Minnesota, New Mexico, North Carolina, Pennsylvania, Wisconsin, and Puerto Rico require detailed pre-sentence reports for convictions under DUI offenses. Pre-sentence reports make it possible to view

drunken driving convictions against the background of the person's prior behavior. In these jurisdictions pre-sentence reports provide two bases for alternative re-training and rehabilitation sanctions combined with traditional penalties.

States resort to a series of disincentives or punishments to discourage drunken driving. License revocation or suspension is provided for in almost every jurisdiction. Some jurisdictions require such 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. Arizona, Indiana, Iowa, Mississippi, Ohio, Oklahoma, Rhode Island, Texas, Utah, Vermont, Washington, West Virginia, and the Virgin Islands provide for mandatory imprisonment upon the first conviction. All states mandate 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. Such 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 altogether. 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 issuance or reissuance of a driver's license to an erstwhile DUI offender, they have become increasingly concerned about liability issues and are making attendance at re-training or rehabilitation centers a pre-condition to any limited license or probation.<sup>1</sup>

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<sup>1</sup>Minnesota, 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 Imprison- ment	DUI: Mandatory Pre-sentence Report	DUI: Retraining Offenders	DUI: Rehabilitating Offenders	Citation/Comment
Alabama	▲ <sup>1</sup>	None	None	▲	▲ <sup>2</sup>	▲ <sup>3</sup>	<p><sup>1</sup>Ala. Code §32-6-16(6)(2). Subject, however, to due process constraints. <i>Smith v. McGriff</i>, 434 F. Supp. 673 (M.D. Ala. 1976).</p> <p><sup>2</sup>Optional. §32-5-170.</p> <p><sup>3-5</sup>Acts of 1975, No. 1205, §1-101. 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	▲ <sup>1</sup>	▲ <sup>2</sup>	▲ <sup>3</sup>	▲ <sup>4</sup>	▲ <sup>5</sup>	▲ <sup>6</sup>	<p><sup>1</sup>Alaska Stat. §28.15.181(a)(5); §28.15.181(b).</p> <p><sup>2</sup>§28.15.181(b) and §28.15.201.</p> <p><sup>3</sup>Upon a second conviction within 5 yrs. of first conviction and subsequent conviction. §28.35.030(a).</p> <p><sup>4</sup>But presumed under §28.15.220(a)(b). <i>City of Fairbanks v. Schrock</i>, 457 P. 2d 242 (Alaska 1969).</p> <p><sup>5-6</sup>§28.15.231(a); §28.15.241(b). Statewide pre-sentence reporting and driver improvement program. DMV identifies "problem drivers" on the basis of point accumulation and recommends retraining.</p>
Arizona	▲ <sup>1</sup>	▲ <sup>2</sup>	▲ <sup>3</sup>	▲ <sup>4</sup>	▲ <sup>5</sup>	▲ <sup>6</sup>	<p><sup>1</sup>Ariz. Rev. Stat. Ann. §28.692.01A and B. Optional for the initial offense; mandatory upon second and subsequent offenses.</p> <p><sup>2</sup>May be possible under §28.692.01C.</p> <p><sup>3</sup>§28.692.01A and B.</p> <p><sup>4</sup>Presumed under §28.691E.</p> <p><sup>5-6</sup>May be possible under §28.692.01A and B. Treatment of persons impaired by alcoholism/habitual drug users provided under §36.2023 et. seq.</p>

## Chart 7/Driver Screening, Rehabilitation, and Sanctions

State	DUI: Mandatory Revocation or Suspension	DUI: Limited License After Conviction	DUI: Mandatory Imprison- ment	DUI: Mandatory Pre-sentence Report	DUI: Retraining Offenders	DUI: Rehabilitating Offenders	Citation/Comment
Arkansas	▲ <sup>1</sup>	▲ <sup>2</sup>	▲ <sup>3</sup>	▲ <sup>4</sup>	▲ <sup>5</sup>	▲ <sup>6</sup>	<p><sup>1</sup>Ark. Stat. Ann. §75.1029.4(1).</p> <p><sup>2</sup>§75.1029-4(1)(a).</p> <p><sup>3</sup>§41.901(2)(a).</p> <p><sup>4-6</sup>§75.1029.4(2)(6). Pre-sentence 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 license restrictions possible.</p>
California	▲ <sup>1</sup>	▲ <sup>2</sup>	▲ <sup>3</sup>	▲ <sup>4</sup>	▲ <sup>5</sup>	▲ <sup>6</sup>	<p><sup>1</sup>Cal. Vehicle Code §23102.3.</p> <p><sup>2</sup>§13201.5.</p> <p><sup>3</sup>§13210.</p> <p><sup>4</sup>§23102; §23105.</p> <p><sup>5-6</sup>§23102.1; see also Cal. Health and Saf. Code §11850; Cal. Mot. Veh. Code §1320.5 and §13352.5. Statewide rehabilitation or retraining program does not exist. However, an experimental rehabilitation program for drivers convicted of DWI has been established in 4 counties with the hope that it will assist the state in formulating an appropriate statewide program.</p>
Colorado	▲ <sup>1</sup>	None	▲ <sup>3</sup>	▲ <sup>4</sup>	▲ <sup>5</sup>	▲ <sup>6</sup>	<p><sup>1</sup>Colo. Rev. Stat. Ann. §42.2.201. Habitual offenders.</p> <p><sup>2</sup>None.</p> <p><sup>3</sup>Upon second and subsequent convictions. §42.4. 1202(4)(a). Also possible (optional) under §42.4. 1202(4)(b) for driving while impaired by alcohol.</p> <p><sup>4</sup>§42.4.1202(3)(e).</p> <p><sup>5-6</sup>Provided under §25.1.301 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.</p>



## Chart 7/Driver Screening, Rehabilitation, and Sanctions

State	DUI: Mandatory Revocation or Suspension	DUI: Limited License After Conviction	DUI: Mandatory Imprison- ment	DUI: Mandatory Pre-sentence Report	DUI: Retraining Offenders	DUI: Rehabilitating Offenders	Citation/Comment
Connecticut	None	None	▲ <sup>1</sup>	▲ <sup>2</sup>	▲ <sup>3</sup>	▲ <sup>4</sup>	<p><sup>1</sup>Conn. Gen. Stat. Ann. §14.227a(e). Second and subsequent offense.</p> <p><sup>2</sup>§14.227a(b)(2).</p> <p><sup>3-4</sup>Possible under §17.155 K 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.</p>
Delaware	▲ <sup>1</sup>	▲ <sup>2</sup>	▲ <sup>3</sup>	None	▲ <sup>4</sup>	▲ <sup>5</sup>	<p><sup>1</sup>Del. Code Ann. tit. 21, §4177(b), subject to §4177(c).</p> <p><sup>2</sup>Possible under §21.2743.</p> <p><sup>3</sup>Upon second and subsequent offenses. Tit. 21, §4177(a).</p> <p><sup>4</sup>Tit. 21, §4177 et. seq.</p> <p><sup>5</sup>Id. (will terminate July 1, 1982). 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 conditioned license by offender.</p>
Florida	▲ <sup>1</sup>	▲ <sup>2</sup>	▲ <sup>3</sup>	None	▲ <sup>4</sup>	▲ <sup>5</sup>	<p><sup>1</sup>Fla. Stat. Ann. §322.26; §322.28(2)(a).</p> <p><sup>2</sup>§322.28(2)(a).</p> <p><sup>3</sup>Upon second and subsequent convictions §316.193(2)b, and §316.193(4)(b)&amp;(c).</p> <p><sup>4-5</sup>§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>

## Chart 7/Driver Screening, Rehabilitation, and Sanctions

State	DUI: Mandatory Revocation or Suspension	DUI: Limited License After Conviction	DUI: Mandatory Imprison- ment	DUI: Mandatory Pre-sentence Report	DUI: Retraining Offenders	DUI: Rehabilitating Offenders	Citation/Comment
Georgia	▲ <sup>1</sup>	▲ <sup>2</sup>	▲ <sup>3</sup>	None	▲ <sup>4</sup>	▲ <sup>5</sup>	<p><sup>1</sup>Not included under Ga. Code Ann. §86A-902. But §92A-9908 provides for suspension: also §68B-305(3).</p> <p><sup>2</sup>§68B-311.</p> <p><sup>3</sup>Upon second and subsequent convictions. §68A-902(c).</p> <p><sup>4</sup>§27-2506. Privilege denied to habitual offenders. Court may require non-habitual DWI offender to attend and satisfactorily complete a driver improvement program. General rehabilitation program covers acute alcoholics.</p> <p><sup>5</sup>Possible, subject to 99-3919, under §99-3909 to §99-3913</p>
Hawaii	None	None	▲ <sup>1</sup>	▲ <sup>2</sup>	▲ <sup>3</sup>		<p><sup>1</sup>Hawaii Rev. Stat. §291-4; §291-7. Mandatory prison or fine or both.</p> <p><sup>2</sup>Can be presumed under §§286-153, 291-5, 286-155, 286-156.</p> <p><sup>3</sup>§286G-1,213; §706-620. Court in its discretion may withhold sentence of imprisonment and send DWI offender to counselling and retraining.</p>
Idaho	▲ <sup>1</sup>	None	▲ <sup>2</sup>	None	▲ <sup>3</sup>	▲ <sup>4</sup>	<p><sup>1</sup>Idaho Code §49-1102(c). Mandatory suspension with increasing severity for repeaters.</p> <p><sup>2</sup>§49-1102(e). Upon second and subsequent convictions.</p> <p><sup>3-4</sup>§§49-356, 49-356. A DWI offender may be referred for participation in retraining and/or rehabilitation programs by a driver improvement counselor, a judge or a district court magistrate or the hearing officer of the department of law enforcement.</p>

## Chart 7/Driver Screening, Rehabilitation, and Sanctions

State	DUI: Mandatory Revocation or Suspension	DUI: Limited License After Conviction	DUI: Mandatory Imprison- ment	DUI: Mandatory Pre-sentence Report	DUI: Retraining Offenders	DUI: Rehabilitating Offenders	Citation/Comment
Illinois	▲ <sup>1</sup>	▲ <sup>2</sup>	▲ <sup>3</sup>	None	▲ <sup>4</sup>	▲ <sup>5</sup>	<p><sup>1</sup>Ill. Ann. Stat. ch. 95½, §§11-501(i), 6-205(a)2.</p> <p><sup>2</sup>Ch. 95½, §6-205(a)10.</p> <p><sup>3</sup>Ch. 95½, §11-501(i). Upon second or subsequent convictions subject to Unified Correction Code ch. 38, §1001.1.1 et. seq.</p> <p><sup>4-5</sup>The Department of Mental Health has established a statewide comprehensive and coordinated program for rehabilitation of addicts, alcoholics, and intoxicated persons. Habitual DWI offenders or DWI offenders with problems of alcoholism and addiction may be committed to such rehabilitation.</p>
Indiana	▲ <sup>1</sup>	▲ <sup>2</sup>	None	▲ <sup>3</sup>	▲ <sup>4</sup>	▲ <sup>5</sup>	<p><sup>1</sup>Ind. Stat. Ann. §9-4-1-54(b)(1) and (2). Court recommends the suspension of the driving license.</p> <p><sup>2</sup>§9-4-1-54(b)(1)(2). Court may put the first offender on probation with limited license.</p> <p><sup>3</sup>§9-4-1-130.</p> <p><sup>4-5</sup>§§16-13-6.1-16; 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	▲ <sup>1</sup>	▲ <sup>2</sup>	▲ <sup>3</sup>	None	▲ <sup>4</sup>	▲ <sup>5</sup>	<p><sup>1</sup>Iowa Code Ann. §321.283.</p> <p><sup>2</sup>§321.283-6.</p> <p><sup>3</sup>§321.281. For 2 days for 1st conviction with longer confinement for subsequent convictions.</p> <p><sup>4-5</sup>§321.283. Courts are empowered to commit a DWI 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 courses.</p>

## Chart 7/Driver Screening, Rehabilitation, and Sanctions

State	DUI: Mandatory Revocation or Suspension	DUI: Limited License After Conviction	DUI: Mandatory Imprison- ment	DUI: Mandatory Pre-sentence Report	DUI: Retraining Offenders	DUI: Rehabilitating Offenders	Citation/Comment
Kansas	▲ <sup>1</sup>	▲ <sup>2</sup>	▲ <sup>3</sup>	None	None	▲ <sup>4</sup>	<p><sup>1</sup>Kan. Stat. Ann. §8-1567(d). Judge may revoke such license.</p> <p><sup>2</sup>§8-1567(e). Judge may issue such a license instead of revoking it.</p> <p><sup>3</sup>§8-1567(c). Upon second or subsequent convictions.</p> <p><sup>4</sup>§§41-1266, 67-4007. In addition to the comprehensive alcoholism and intoxication treatment organized by the Department of Public Health, community run centers also cater to rehabilitative needs of DWI offenders.</p>
Kentucky	▲ <sup>1</sup>	▲ <sup>2</sup>	None	▲ <sup>3</sup>	▲ <sup>4</sup>	▲ <sup>5</sup>	<p><sup>1</sup>Ky. Rev. Stat. Ann. §186.560(1)(b). Mandatory revocation on a progressive scale for each offense.</p> <p><sup>2</sup>§186.650(4). Possible if court so recommends in writing upon 1st offense and on the condition that driver attends retraining school.</p> <p><sup>3</sup>§§186.570(1), 186.550. Optional.</p> <p><sup>4</sup>§186.560(4). The Department of Motor Vehicles may refer a DWI offender upon written recommendation of the court.</p> <p><sup>5</sup>Such alcoholic DWI offenders may be referred to rehabilitation centers.</p>
Louisiana	▲ <sup>1</sup>	▲ <sup>2</sup>	▲ <sup>3</sup>	None	▲ <sup>4</sup>	▲ <sup>5</sup>	<p><sup>1</sup>La. Stat. Ann. §32-414A and §414B(2). Suspension for first offense and revocation upon second and subsequent convictions.</p> <p><sup>2</sup>§32-414A. The Department of Motor Vehicles may at its discretion issue a limited license (instead of suspension) on the basis of hardship, etc.</p> <p><sup>3</sup>§§14-98C et. seq. Upon second and subsequent conviction.</p>

## Chart 7/Driver Screening, Rehabilitation, and Sanctions

State	DUI: Mandatory Revocation or Suspension	DUI: Limited License After Conviction	DUI: Mandatory Imprison- ment	DUI: Mandatory Pre-sentence Report	DUI: Retraining Offenders	DUI: Rehabilitating Offenders	Citation/Comment
Louisiana (Continued)	▲ <sup>1</sup>	▲ <sup>2</sup>	▲ <sup>3</sup>	None.	▲ <sup>4</sup>	▲ <sup>5</sup>	4-5§32-415.1A(2). Judges are given authority to refer 1st 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.
Maine	▲ <sup>1</sup>	▲ <sup>2</sup>	▲ <sup>3</sup>	None	▲ <sup>4</sup>	▲ <sup>5</sup>	<p><sup>1</sup>Me. Rev. Stat. Ann. tit. 29 §1312-10-A-A. Progressive suspension.</p> <p><sup>2</sup>Tit. 29 §1312-10-A-C. Secretary of State has discretion to do so.</p> <p><sup>3</sup>Tit. 29 §1312-10B.</p> <p><sup>4-5</sup>Tit. 29 §1312-10-A-B (1) and (3). 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	▲ <sup>1</sup>	▲ <sup>2</sup>	None <sup>3</sup>	None	▲ <sup>4</sup>	▲ <sup>5</sup>	<p><sup>1</sup>Md. Ann. Code §§27-103, 16-205. 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 under §16(4).</p> <p><sup>2</sup>§16-113. To the extent not prohibited by §16-208 and §16-404.</p> <p><sup>3</sup>§27-101. Imprisonment is optional.</p>

## Chart 7/Driver Screening, Rehabilitation, and Sanctions

State	DUI: Mandatory Revocation or Suspension	DUI: Limited License After Conviction	DUI: Mandatory Imprison- ment	DUI: Mandatory Pre-sentence Report	DUI: Retraining Offenders	DUI: Rehabilitating Offenders	Citation/Comment
Maryland (Continued)	▲	▲	None	None	▲ <sup>1</sup>	▲ <sup>1</sup>	<sup>1</sup> §2C-310. The Division of Alcoholism, in collaboration with pertinent agencies, viz. Court, Police, Department of Motor Vehicles Administration, proposes 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.
Massachusetts	▲ <sup>1</sup>	▲ <sup>2</sup>	▲ <sup>3</sup>	▲ <sup>3</sup>	▲ <sup>4</sup>	▲ <sup>5</sup>	<sup>1</sup> Mass. Gen. Laws Ann. ch. 90 §24(b) & 18-A §2293 and §2295. Revocation. Habitual offenders are not issued license for 1 year. <sup>2</sup> Ch. 90 §22F and Ch. 90 §24E (1975). <sup>3</sup> Ch. 90 §24(D), and §24(1)(c). <sup>4-5</sup> Statewide retraining and rehabilitation programs exist. 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 PSI to determine the efficacy of such committal.
Michigan	▲ <sup>1</sup>	▲ <sup>2</sup>	▲ <sup>3</sup>	None	▲ <sup>5</sup>	▲ <sup>4</sup>	<sup>1</sup> Mich. Comp. Laws Ann. §9.2325(c).Suspension only. <sup>2</sup> §9.2023(3) and §2325(b). <sup>3</sup> §9.2325(c). Upon second and subsequent convictions. <sup>4-5</sup> §9.2325(d), §16.301 and §333.6101 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.

## Chart 7/Driver Screening, Rehabilitation, and Sanctions

State	DUI: Mandatory Revocation or Suspension	DUI: Limited License After Conviction	DUI: Mandatory Imprison- ment	DUI: Mandatory Pre-sentence Report	DUI: Retraining Offenders	DUI: Rehabilitating Offenders	Citation/Comment
Minnesota	▲ <sup>1</sup>	▲ <sup>2</sup>	▲ <sup>3</sup>	▲ <sup>4</sup>	▲ <sup>5</sup>	▲ <sup>6</sup>	<p><sup>1</sup>Minn. Stat. Ann. § 169.121. Pre-hearing is assured under § 169.123 subd. 5a.</p> <p><sup>2</sup>§ 171.30.</p> <p><sup>3</sup>§ 169.121 subd. 4. Upon second and subsequent conviction.</p> <p><sup>4</sup>§ 169.124 to 126.</p> <p><sup>5-6</sup>§ 169.123 subd. 10 and § 169. 124 et. seq. 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 problem assessment and evaluation (PSI) is mandatory.</p>
Mississippi	▲ <sup>1</sup>	None	▲ <sup>2</sup>	None	▲ <sup>3</sup>	▲ <sup>4</sup>	<p><sup>1</sup>Miss. Code Ann. §§ 63-11-31, 63-11-35. Mississippi has in reality, three sets of penalties regarding DWI. People with 0.10% alcohol content face license revocation and imprisonment upon second or subsequent conviction. However, persons convicted (a) for 0.15% alcohol content and (b) persons convicted without chemical tests ["unavailable" (sic)—presumably not provided for at discretion of law enforcement officer (as a defendant has no right to such test) or refused by the accused] face mandatory imprisonment as well as revocation of license upon the very first conviction.</p> <p><sup>2</sup>§§ 63-11-31, 63-11-33, 63-11-35.</p> <p><sup>3-4</sup>§ 63-11-32. Statewide Mississippi Alcohol Safety Education Program (MASEP) provides for both retraining and rehabilitation. Retraining is available only for first offenders and the court may stay all or part of mandatory penalty when the first offender satisfactorily completes the retraining program.</p>

## Chart 7/Driver Screening, Rehabilitation, and Sanctions

State	DUI: Mandatory Revocation or Suspension	DUI: Limited License After Conviction	DUI: Mandatory Imprison- ment	DUI: Mandatory Pre-sentence Report	DUI: Retraining Offenders	DUI: Rehabilitating Offenders	Citation/Comment
Missouri	▲ <sup>1</sup>	▲ <sup>2</sup>	▲ <sup>3</sup>	None	▲ <sup>4</sup>	▲ <sup>5</sup>	<p><sup>1</sup>Mo. Ann. Stat. §302.304. Revocation</p> <p><sup>2</sup>§302.309.3</p> <p><sup>3</sup>§577.012.2 Upon second or subsequent convictions.</p> <p><sup>4-5</sup>§302.304.3. Both local and statewide centers exist. License revocation necessitates offenders' undergoing a complete re-examination for reissuance. Court can use sentencing provision to induce attendance at rehabilitation programs.</p>
Montana	▲ <sup>1</sup>	▲ <sup>2</sup>	▲ <sup>3</sup>	None	▲ <sup>4</sup>	▲ <sup>5</sup>	<p><sup>1</sup>Mont. Rev. Codes Ann. §61-5-205(2).</p> <p><sup>2</sup>§§61-5-206, 61-5-208.</p> <p><sup>3</sup>§61-8-714.</p> <p><sup>4-5</sup>§61-8-714(2). Both driver improvement and driver rehabilitation program exist. Court has discretion to suspend a sentence on the condition that the defendant successfully complete a court approved retraining program.</p>
Nebraska	▲ <sup>1</sup>	▲ <sup>2</sup>	▲ <sup>3</sup>	None	▲ <sup>4</sup>	▲ <sup>5</sup>	<p><sup>1</sup>Neb. Rev. Stat. §39-669.07. Upon second and subsequent convictions.</p> <p><sup>2</sup>§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><sup>3</sup>§39-669.07 strictly speaking, law does not provide for any minimum penalty, only habitual offenders are imprisoned.</p> <p><sup>4-5</sup>§39-669.27(2), §39-669.31 et. seq. Has model statewide probation program for retraining and rehabilitation of DWI offenders; program complies with the ASAP program of NHTSA; probation administrator examines and certifies local (county or municipal) programs; DWI offenders are granted probation on condition that they attend, complete, and pay for the alcohol abuse program.</p>



## Chart 7/Driver Screening, Rehabilitation, and Sanctions

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Nevada	▲ <sup>1</sup>	▲ <sup>2</sup>	None	None	▲ <sup>4</sup>	▲ <sup>5</sup>	<p><sup>1</sup>Nev. Rev. Stat. §§483.460.1; 484.379.3a. Upon second or subsequent convictions. Defendants license is also revoked if death results from any DWI. §484.3795</p> <p><sup>2</sup>§483.490.2.</p> <p><sup>3</sup>§484.379.4. Optional</p> <p><sup>4-5</sup>§483.470 and chapter 458. The provisions for traffic safety school alcohol and drug abuse seem to provide for retraining and rehabilitation of DWI offenders.</p>
New Hampshire	▲ <sup>1</sup>	None	None	None	▲ <sup>2</sup>	▲ <sup>3</sup>	<p><sup>1</sup>N.H. Rev. Stat. Ann. ch. 262 A.62. Revocation for 60 days—at least. Chapt. 262 A.62. Court's discretion lies only in determining period of revocation in between 60 days to 2 years. <i>State v. Greenwood</i> 115 N.H. 117, 335A2d 644 (1975).</p> <p><sup>2-3</sup>A Justice of the Superior Court, or of a municipal or district court may commit a DWI offender to a duly designated rehabilitation treatment center.</p>
New Jersey	▲ <sup>1</sup>	None	None	None	▲ <sup>2</sup>	▲ <sup>3</sup>	<p><sup>1</sup>N.J. Stat. Ann. §39:4-50(a). Revocation for not less than 60 days nor more than 180 days upon 1st conviction. §39:4-50(a). 1 to 3 years revocation upon second conviction.</p> <p><sup>2-3</sup>§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 approved by the Director of the Division of Motor Vehicles (\$30.00 fee).</p>
New Mexico	▲ <sup>1</sup>	▲ <sup>2</sup>	None	▲ <sup>3</sup>	▲ <sup>4</sup>	▲ <sup>5</sup>	<p><sup>1</sup>N.M. Stat. Ann. ch. 66-5-29. For 1st offenders revocation is possible subject to attendance at driving school.</p> <p><sup>2</sup>Ch. 66-5-35. However, no such license for habitual offenders. Ch. 66-5.</p>

## Chart 7/Driver Screening, Rehabilitation, and Sanctions

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New Mexico (Continued)	▲ <sup>1</sup>	▲ <sup>2</sup>	None	▲ <sup>3</sup>	▲ <sup>4</sup>	▲ <sup>5</sup>	<sup>3</sup> Ch. 66-5-29.  <sup>4-5</sup> Ch. 66-5-29; ch. 43-2-1 et. seq. After pre-sentence investigation, a trial court, at its discretion, may order a first offender to attend "driving-while intoxicated school," approved by both the court and the division of Motor Vehicle. Successful completion of the program may result in withdrawal of the DWI charges and the dismissal of any conviction.
New York	▲ <sup>1</sup>	▲ <sup>2</sup>	▲ <sup>3</sup>	None	▲ <sup>4</sup>	▲ <sup>5</sup>	<sup>1</sup> N.Y. Veh. & Traf. Law §510.2(111). <sup>2</sup> Id. 521(G).  <sup>3</sup> § 1192.5. Upon second or subsequent convictions within a 10 year period. However, conditional or unconditional discharge possible.  <sup>4-5</sup> § 521;523-a. Alcohol and drug rehabilitation program exists 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 re-training 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.
North Carolina	▲ <sup>1</sup>	▲ <sup>2</sup>	▲ <sup>3</sup>	▲ <sup>4</sup>	▲ <sup>5</sup>	▲ <sup>6</sup>	<sup>1</sup> N.C. Gen. Stat. §20-17(2). Division of Motor Vehicle does it.  <sup>2</sup> §20-179(G)(1). At courts' discretion upon 1st conviction.  <sup>3</sup> §20-179(a)(2). Upon second conviction.  <sup>4</sup> §20-179.1.

## Chart 7/Driver Screening, Rehabilitation, and Sanctions

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North Carolina (Continued)	▲ <sup>1</sup>	▲ <sup>2</sup>	▲ <sup>3</sup>	▲ <sup>4</sup>	▲ <sup>5</sup>	▲ <sup>6</sup>	<sup>5-6</sup> §20-179.1. Trial judge may request a pre-sentence 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.
North Dakota	▲ <sup>1</sup>	▲ <sup>2</sup>	▲ <sup>3</sup>	None	▲ <sup>4</sup>	▲ <sup>5</sup>	<sup>1</sup> N.D. Cent. Code §39-06.1-10. Suspension only. <sup>2</sup> §39.06.1-11.. <sup>3</sup> §39-08.01.2. Upon second or subsequent convictions. <sup>4-5</sup> §§39-06.1-13.2, 39-08.01.5. Both retraining and rehabilitation DWI offenders are possible. Court may refer a DWI 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 DWI offender to reduction of points.
Ohio	▲ <sup>1</sup>	None	▲ <sup>2</sup>	None	▲ <sup>3</sup>	▲ <sup>4</sup>	<sup>1</sup> Ohio Rev. Code Ann. §4507.16(B). At the discretion of the trial court. <sup>2</sup> §4511.99(A). At least for 3 days. <sup>3-4</sup> §§2935.33; 2935.36 and under ch. 3720. A DWI offender can benefit both from a "pre-trial diversion" program as well as a comprehensive alcohol treatment and control program.
Oklahoma	▲ <sup>1</sup>	None	▲ <sup>2</sup>	None	▲ <sup>3</sup>	▲ <sup>4</sup>	<sup>1</sup> Okla. Stat. Ann. tit. 47 §6-2052. Revocation. <sup>2</sup> Tit. 47 §11.902(c). 10 days to a year upon 1st conviction in a jail accredited by the Commissioner of Charities and Corrections. 1 to 5 years in jail upon second conviction.

## Chart 7/Driver Screening, Rehabilitation, and Sanctions

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Oklahoma (Continued)	▲ <sup>1</sup>	None	▲ <sup>2</sup>	None	▲ <sup>3</sup>	▲ <sup>4</sup>	<sup>3-4</sup> Tit. 47 § 11.902.2. Non-profit educational institutions of higher learning, governmental or non-profit organizations offer courses for drinking driver retraining; court may, upon DWI defendant's plea of guilty or nolo contendere, but before judgement 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 complete courses at own expense.
Oregon	▲ <sup>1</sup>	▲ <sup>2</sup>	▲ <sup>3</sup>	None	▲ <sup>4</sup>	▲ <sup>5</sup>	<sup>1</sup> Ore. Rev. Stat. § 484.415(2). <sup>2</sup> §§ 482.477; 482.478. <sup>3</sup> §§ 484.365; 161.615. Upon a second or subsequent conviction within a 5 year period. <sup>4-5</sup> §§ 482.477; 484.415 (a) and (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 rehabilitative treatment. Court may then issue a DWI Rehabilitation Order. Successful satisfaction of the order entitles the defender to avoid additional sentence.
Pennsylvania	▲ <sup>1</sup>	None	▲ <sup>2</sup>	▲ <sup>3</sup>	▲ <sup>4</sup>	▲ <sup>5</sup>	<sup>1</sup> Pa. Stat. Ann. tit. 75 § 1532. Suspension on first conviction and revocation upon second. Habitual offenders lose license. Tit. 75 § 1542. <sup>2</sup> Tit. 18 §§ 106; 1104. <sup>3</sup> Tit. 75 § 1548(a). <sup>4-5</sup> Tit. 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 throughout the Commonwealth for retraining purposes.

## Chart 7/Driver Screening, Rehabilitation, and Sanctions

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Rhode Island	▲ <sup>1</sup>	▲ <sup>2</sup>	▲ <sup>3</sup>	None	▲ <sup>4</sup>	▲ <sup>5</sup>	<p><sup>1</sup>R.I. Gen. Laws Ann. §§31-11-6; 31-11-7. Optional under §31-22-21.</p> <p><sup>2</sup>§31-11-7(b).</p> <p><sup>3</sup>§31-27-1(b). If conviction is under driving as to endanger resulting in death.</p> <p><sup>4-5</sup>§§31-27-2(c); 31-27-2-1(a); 40-1-4-10 et. seq. State offers both retraining and rehabilitative treatments to DWI offenders. Special courses on driving while intoxicated are operated by state accredited colleges or universities; DWI offenders may be ordered by the court to attend such courses, including persons refusing to take BAC tests. Approved public treatment facilities for addicts and alcoholics offer rehabilitation to acute DWI offenders.</p>
South Carolina	▲ <sup>1</sup>	None	None	None	▲ <sup>2</sup>	▲ <sup>3</sup>	<p><sup>1</sup>S.C. Code Ann. §56 5 2990. For a period of 6 months for first conviction; to increase upon subsequent convictions.</p> <p><sup>2-3</sup>§§56.1-1320; 56.1-1330; 44.51-610 et. seq. Retraining and rehabilitation of DWI offenders are possible through the alcohol traffic safety school and the South Carolina Alcoholic Center respectively; attendance in and completion of retraining program is mandatory for issuance of a provisional (driving) permit.</p>
South Dakota	▲ <sup>1</sup>	▲ <sup>2</sup>	None	▲ <sup>3</sup>	▲ <sup>4</sup>	▲ <sup>5</sup>	<p><sup>1</sup>S.D. §§32-23-3; 32-23-3, 32-23-4. Revocation for 30 days or more upon first conviction. Longer period of revocation for subsequent convictions.</p> <p><sup>2</sup>§§32-23-2; 32-23-3; 32-23-4.</p> <p><sup>3-5</sup>§34-20A-21 et. seq. Division of Alcoholism is specially created to develop, encourage and foster statewide, regional and local plans and programs for rehabilitation. Successful completion of treatment is duly noted.</p>

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Tennessee	▲ <sup>1</sup>	▲ <sup>2</sup>	▲ <sup>3</sup>	▲ <sup>4</sup>	▲ <sup>5</sup>	▲ <sup>6</sup>	<p><sup>1</sup>Tenn. Code Ann. §59-1051. Possible at court's discretion.</p> <p><sup>2</sup>§59-1035. Presumably at the discretion of the Judge.</p> <p><sup>3</sup>§59-1035. Upon first conviction.</p> <p><sup>4-6</sup>§59-713(d); 59-1023. Habitual DWI offenders are required to submit to an approved examination in order to ascertain any need for treatment. If so found, completion of the program becomes a pre-condition for reissuance of driving license. Offenders pay for the cost to the extent of capability.</p>
Texas	▲ <sup>1</sup>	None	▲ <sup>2</sup>	None	▲ <sup>3</sup>	▲ <sup>4</sup>	<p><sup>1</sup>An in-state final conviction of DWI automatically suspends the convict's driving license without the necessity of further official action. Op. Atty. Gen. 1977 No. H-1053.</p> <p><sup>2</sup>Tex. Rev. Civ. Stat. Ann. §§6701 .1, 6701 .2.</p> <p><sup>3-4</sup>§6687b. Department of Motor Vehicles is empowered to establish a statewide retraining and rehabilitation school. The Department, at its discretion, may require a DWI offender to complete the program before a suspended or a new license is reissued.</p>
Utah	▲ <sup>1</sup>	▲ <sup>2</sup>	▲ <sup>3</sup>	None	▲ <sup>4</sup>	▲ <sup>5</sup>	<p><sup>1</sup>Utah Code Ann. §41-6-44(e) and §41-2-18(a)(2).</p> <p><sup>2</sup>§41-2-18(d). At the discretion of the Department of Motor Vehicles.</p> <p><sup>3</sup>§41-6-44(d). Upon the very first conviction if fatality occurs; upon second conviction within a period of five years.</p> <p><sup>4-5</sup>§10-8-47. The trial Judge at discretion may recommend a DWI offender to attend either a state supported or community run rehabilitative program. Cities are also empowered to provide for such programs and to impose necessary judicial supervision.</p>

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Vermont	▲ <sup>1</sup>	▲ <sup>2</sup>	▲ <sup>3</sup>	None	▲ <sup>4</sup>	▲ <sup>5</sup>	<p><sup>1</sup>Vt. Stat. Ann. tit. 23, § 1206(a). At least 90 days for first conviction; longer period subsequently.</p> <p><sup>2</sup>Tit. 23 § 1206(a) and tit. 23 (§ 1208(b).</p> <p><sup>3</sup>Tit. 23 § 1210. If fatality occurs.</p> <p><sup>4-5</sup>Tit. 23 § 1206(b) and tit. 23 § 1208(e) et. seq. DWI offenders are assigned to Department of Motor Vehicles approved rehabilitation program. Offender pays up to \$50.00; successful completion of the program is a condition for reduction of a suspension period of reissuance of a new license.</p>
Virginia	▲ <sup>1</sup>	None	▲ <sup>2</sup>	▲ <sup>3</sup>	▲ <sup>4</sup>	▲ <sup>5</sup>	<p><sup>1</sup>Va. Code Ann. § 46-1-417(b) and § 46-1-421. Revocation for a year upon 1st conviction; increases upon subsequent convictions.</p> <p><sup>2</sup>§ 18-2-270. For second or subsequent convictions within 10 years.</p> <p><sup>3</sup>§ 46-1-417(b)(1).</p> <p><sup>4-5</sup>§§ 18-2-270, 18-2-271.1. DUI offender, with the leave of the court or upon court order, with or without a finding of guilty by the court or jury, can enter the alcohol safety action or driver alcohol rehabilitation program. The court may also suggest alternate programs.</p>
Washington	▲ <sup>1</sup>	None	▲ <sup>2</sup>	None	▲ <sup>3</sup>	▲ <sup>4</sup>	<p><sup>1</sup>Wash. Rev. Code Ann. § 46.61.518(4)a. Suspension for 30 days upon 1st conviction. Longer suspension upon 2nd; and revocation upon third conviction.</p> <p><sup>2</sup>§ 46.61.508(1). 5 days to a year to begin with.</p> <p><sup>3-4</sup>§ 46.61.515. Statewide Alcohol Safety Action Program (ASAP). A person committing two or more DUI offenses within a period of five 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>

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West Virginia	▲ <sup>1</sup>	▲ <sup>2</sup>	▲ <sup>3</sup>	None	▲ <sup>4</sup>	▲ <sup>5</sup>	<p><sup>1</sup>W. Va. Code Ann. § 17C-5-2(c). Progressive revocation beginning with 6 months for 1st offense.</p> <p><sup>2</sup>§ 17C-5-2(c). For 1st offenders only if and when they attend driver improvement school.</p> <p><sup>3</sup>§ 17C-5-2(c).</p> <p><sup>4-5</sup>§ 17C-5-2(c). 1st (DUI) offender is granted the option to attend an alcohol and drug counter-measure 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	▲ <sup>1</sup>	▲ <sup>2</sup>	▲ <sup>3</sup>	▲ <sup>4</sup>	▲ <sup>5</sup>	▲ <sup>6</sup>	<p><sup>1</sup>Wis. Stat. Ann. § 343.30(1g)(b). Upon 1st conviction-revoked for a period of 90 days to 6 months. Offender may be committed to rehabilitation center in lieu of revocation. If 2 or more convictions within 5 years then offenders' license is revoked for 3 months to 1 year.</p> <p><sup>2</sup>§ 343.10(1). Occupational license.</p> <p><sup>3</sup>§ 346.65(2). Optional upon second conviction; mandatory for repeaters.</p> <p><sup>4</sup>§ 343.30(1g)(a).</p> <p><sup>5-6</sup>§ § 343.30; 345.60. Judge decides whether the defendant should receive an assessment by a counselor 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.</p>
Wyoming	▲ <sup>1</sup>	▲ <sup>2</sup>	▲ <sup>3</sup>	None	▲ <sup>4</sup>	▲ <sup>5</sup>	<p><sup>1</sup>Wyo. Stat. Ann. §§ 31-7-127, 31-7-126(a)(iii). Progressive suspension or revocation: 90 days for first offense, 6 months upon second, 12 months for 3rd conviction. Habitual offenders lose license for a year.</p>



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Wyoming (Continued)	▲ <sup>1</sup>	▲ <sup>2</sup>	▲ <sup>3</sup>	None	▲ <sup>4</sup>	▲ <sup>5</sup>	<p><sup>2</sup>§31-7-127(c). Possible at the discretion of the Division of Motor Vehicles after hearing.</p> <p><sup>3</sup>§31-5-233(d). For 60 days maximum upon second conviction. Longer periods for habitual offenders.</p> <p><sup>4-5</sup>Possible, but not specifically provided for. 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 waving license suspension, etc.</p>
Washington, DC	▲ <sup>1</sup>	None	None	None	▲ <sup>2</sup>	▲ <sup>3</sup>	<p><sup>1</sup>D.C. Code Encycl. Ann. §40-609(d)(1). 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 cause, such as taking prescription drugs; emphasis on governing 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><sup>2-3</sup>§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	▲ <sup>1</sup>	▲ <sup>2</sup>	▲ <sup>3</sup>	▲ <sup>4</sup>			<p><sup>1</sup>P.R. Laws Ann. tit. 9 §1042. Suspension until rehabilitated.</p> <p><sup>2</sup>Tit. 9 §1042(h).</p> <p><sup>3</sup>Tit. 9 §1042(b).</p>

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State	DUI: Mandatory Revocation or Suspension	DUI: Limited License After Conviction	DUI: Mandatory Imprison- ment	DUI: Mandatory Pre-sentence Report	DUI: Retraining Offenders	DUI: Rehabilitating Offenders	Citation/Comment
Puerto Rico (Continued)	▲	▲	▲	▲ <sup>1</sup>		▲ <sup>1</sup>	<sup>1</sup> Tit. 9 §1042(e). Court mandatorily requires detailed pre-sentence report from the Correctional Administrations 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.
Virgin Islands	▲ <sup>1</sup>	None	▲ <sup>2</sup>	None	▲ <sup>3</sup>	▲ <sup>4</sup>	<p><sup>1</sup>V.I. Code Ann. Tit. 20 §493(5). Automatic suspension for at least 60 days for first conviction. 6 months for second and longer for habitual offenders.</p> <p><sup>2</sup>Tit. 20 §504.</p> <p><sup>3-4</sup>Tit. 5 §4612 et. seq. Both district and territorial courts are given jurisdiction to divert certain offenders within which DWI offenders also fall to a program of community supervision and services. Only first offenders are eligible for the benefits of community supervision and services; among other rehabilitation retraining.</p>

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## VIII. Legal Age for Consumption of Beer, Wine and Distilled Spirits

Chapter 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% alcohol or less (by weight) frequently is referred to as "low point"; that contain-

ing more than 3.2% is sometimes referred to as "high point." Generally, "Table" wine contains 14% or less alcohol (by volume). Exceptions, viz. Mississippi and South Dakota, are noted. Table wine often is referred to as "light" wine.<sup>1</sup>

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<sup>1</sup> SOURCE: Adapted from charts prepared by Statistics & Economic Research Division, Distilled Spirits Council of the United States, Inc., 1979.

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

State	Effective Date	Minimum Drinking Age <sup>A</sup> 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	19	19	19	19	19
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	21	21	21	21
Connecticut	10/72	18	18	18	18	18
Delaware	7/72	20	20	20	20	20
District of Columbia	2/34	18	18	18	21	21
Florida	7/73	18	18	18	18	18
Georgia	7/72	18	18	18	18	18
Hawaii	3/72	18	18	18	18	18
Idaho	7/72	19	19	19	19	19
Illinois	10/73	19	19	19	19	19
	1/80	21	21	21	21	21
Indiana	1/34	21	21	21	21	21
Iowa	7/73	18	18	19 <sup>B</sup>	19 <sup>B</sup>	19 <sup>B</sup>
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	18	18	18	21	21
Massachusetts	4/79	20	20	20	20	20
Michigan	12/78	21 <sup>C</sup>	21 <sup>C</sup>	21 <sup>C</sup>	21 <sup>C</sup>	21 <sup>C</sup>
Minnesota	9/76	19	19	19	19	19
Mississippi	7/66	18	18 <sup>D</sup>	18 <sup>D</sup>	21	21
Missouri	5/45	21	21	21	21	21
Montana	7/73	19	19	19	19	19
Nebraska	7/72	19	19	19	19	19
Nevada	12/33	21	21	21	21	21
New Hampshire	5/79	20	20	20	20	20
New Jersey	1/73	18	18	18	18	18
New Mexico	12/34	21	21	21	21	21
New York	5/34	18	18	18	18	18
North Carolina	5/35	18	18	18	21	21
North Dakota	12/36	21	21	21	21	21
Ohio	8/35	18	21	21	21	21
Oklahoma	12/76	18	21	21	21	21
Oregon	12/33	21	21	21	21	21
Pennsylvania	7/35	21	21	21	21	21
Rhode Island	3/72	18	18	18	18	18
South Carolina	5/35	18	18	18	18	21

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

State	Effective Date	Minimum Drinking Age <sup>A</sup> and Beverage				
		Beer		Wine		Distilled Spirits
		Not Over 3.2% Alcohol	Over 3.2% Alcohol	Table	Fortified	All
South Dakota	7/72	18	21	21 <sup>E</sup>	21	21
Tennessee	6/79	19	19	19	19	19
Texas	8/73	18	18	18	18	18
Utah	3/35	21	21	21	21	21
Vermont	7/71	18	18	18	18	18
Virginia	7/74	18	18	21	21	21
Washington	1/34	21	21	21	21	21
West Virginia	6/72	18	— <sup>F</sup>	18	18	18
Wisconsin	3/72	18 <sup>G</sup>	18 <sup>G</sup>	18	18	18
Wyoming	5/73	19	19	19	19	19

## Notes:

<sup>A</sup>In general, minimum drinking age means minimum age for which purchase of the relevant alcohol beverage is legal.

<sup>B</sup>Does not apply to beer or to those persons born on or before 6/30/60.

<sup>C</sup>Effective 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.

<sup>D</sup>Age 18 applies in Mississippi for both beer having not over 4.0% alcohol and "light wine"; otherwise, age 21.

<sup>E</sup>Defined as wine under 3.2% by weight or 4% by volume.

<sup>F</sup>Purchase of this beverage not legal.

<sup>G</sup>No minimum age is given for persons accompanied by parent or guardian.

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