TRAFFIC ISSUE BRIEF COMPENDIUM

NATIONAL CENTER FOR STATE COURTS

NCSC
National Center for State Courts

Mission:

To promote the rule of law and to improve the administration of justice in the state courts and courts around the world.

The National Center for State Courts, headquartered in Williamsburg, Va., is a nonprofit court improvement organization dedicated to improving the administration of justice by providing leadership and service to the state courts. Founded in 1971 by the Conference of Chief Justices and Chief Justice of the United States Warren E. Burger, NCSC provides education, training, technology, management, and research services to the nation's state courts. NCSC is an independent, tax-exempt organization in accordance with Section 501 (c) (3) of the Internal Revenue Service.

Traffic Issue Brief Compendium

By National Center for State Courts Staff:
Greg Hurley
Deborah W. Smith
William E. Raftery
Jarret W. Hann
Blake Points Kavanagh
Elizabeth Buner
Nathaniel Ralstin

National Center for State Courts
300 Newport Avenue
Williamsburg, VA 23185-4147

ISBN: 978-0-89656-306-3

This document has been prepared with support from a National Highway Traffic Safety Administration grant. The points of view and opinions offered in this document are those of the authors and do not necessarily represent the official position or policies of the National Center for State Courts or National Highway Traffic Safety Administration.

Table of Contents

Introduction

The following publication is made possible pursuant to a partnership between the National Center for State Courts (NCSC) and the National Highway Traffic Safety Administration (NHTSA). This *partnership* strives to provide resources to judges, court administrators, court clerks, and other court staff on issues related to traffic adjudication. In pursuit of this goal, NCSC publishes monthly *Issue Briefs* on its Traffic Resource Center website. This *Traffic Issue Brief Compendium* features ten of those monthly publications, covering a broad range of traffic-related topics relevant to state and local courts.

The first four briefs compare state statutes and case law that determine whether seat-belt nonuse can be admitted into evidence; the use of out-of-state prior DUI convictions; the liability of alcohol providers; and whether sobriety checkpoints are legal. The next three briefs discuss how various state statutes and courts have addressed questions such as: *What constitutes driving? Is all blood the same? What are the consequences for refusing to consent to a breath/blood/urine test?* Finally, the last three briefs analyze which states have statutes that increase penalties for child endangerment, for vulnerable users like pedestrians and bicyclists, or for habitual offenders.

This unique collection of traffic-law analyses is intended to help judges, clerks, lawyers, and academics. The briefs are written from a neutral perspective, allowing the reader to see the totality of the topic at issue. Contributing authors include attorneys, legal researchers, and supervised law students. Each brief provides full citations to relevant supplementary materials and includes the most current case law as of the date published.

Admissibility of Seat-Belt Nonuse Evidence

The Texas Supreme Court's recent ruling in *Nabors Well Services, Ltd. v. Romero*, 456 S.W.3d 553 (Tex. 2015), is a reversal of an evidence rule that a majority of state courts follow: a prohibition of evidence showing that a crash-involved motorist failed to use a seat belt. The *Romero* decision reversed the exclusionary-evidence rule Texas had followed for over forty years, replacing it with a new rule allowing juries to consider evidence that a plaintiff failed to use an available seat belt in assessing comparative fault.

According to the National Highway Traffic and Safety Administration (NHTSA), twenty-nine states, including the District of Columbia, completely bar evidence of a motorist's failure to use a seat belt in car-accident cases. *See Summary of Vehicle Occupant Protection and Motorcycle Laws*, NHTSA (12th ed., April 2015). Yet forty-nine states, plus the District of Columbia, have laws requiring motorists to wear seat belts. *Id.* The Texas Supreme Court called this "an anachronism" that "may have been appropriate in its time, but today it is a vestige of a bygone legal system and an oddity in light of modern societal norms." *Romero*, at 555.

The state laws that completely exclude or severely limit seat-belt evidence were written at a time when seat belts were viewed with suspicion and were not widely used. From the 1950s through the 1970s, seat-belt use was minimal. In 1968 NHTSA issued Federal Motor Vehicle Safety Standard (FMVSS) 208 on "Occupant Crash Protection," which mandated that automakers install lap belts for all passenger car occupants, with shoulder harnesses for drivers and front-seat passengers. In 1989 FMVSS 208 was amended to require rear outboard lap and shoulder belts as of model year 1989. In 2008 it was amended to require center rear lap and shoulder belts for occupants as of model year 2008.

While federal law requires manufacturers to install seat belts, federal law does not require occupants to use them. Traditionally, seat-belt-use legislation has been within the domain of state governments. Not until 1984 did states begin passing mandatory seat-belt-use laws. Most of these laws included a subsection that explicitly excluded evidence of seat-belt nonuse to prove comparative or contributory negligence or to mitigate damages, or from use in any civil action or insurance-claim adjudication. Leading up to the passage of these laws in the early 1980s, seat belt use was relatively minimal. In 1984 as few as 14% of people nationwide reportedly wore seat belts. *Romero*, at 564. In the intervening time since seat-belt use became mandatory by state laws across the country, the number has jumped to 83%. *See* National Highway Safety Traffic Safety Facts (2008). As the Texas Supreme Court stated in *Romero*, seat belts "have become an unquestioned part of daily life for the vast majority of drivers and passengers." *Romero*, at 555.

The fact that seat belts reduce injuries and save lives is well established and evidenced by a wealth of research. A 2008 Traffic Safety Facts report from NHTSA indicates that seat-belt use reduces the risk of fatal injury to front-seat passenger-car occupants by 45% and the risk of moderate-to-critical injury by 50%. Seat belts are highly effective in preventing total ejections: research showed 31% of unrestrained occupants were totally ejected from rollover crashes compared with only 1% of restrained occupants.

Yet, in a majority of states, juries will never hear evidence that a plaintiff suing for damages was not wearing a seat belt. A majority of states also exclude seat-belt evidence from product-liability cases. If a speeding driver crashes and sues the car manufacturer, the manufacturer is permitted to introduce evidence of speeding. Other reckless conduct, such as drunk driving, may also be admitted against such a plaintiff. But in a majority of those 29 states banning evidence of seat-belt nonuse, the fact that the plaintiff failed to obey the law and wear a seat belt is deemed inadmissible. This exclusion is particularly problematic in rollover cases where car manufacturers are prohibited from defending their vehicles' safe design by showing that these vehicles effectively protect belted occupants 99% of the time.

Of the nineteen states that allow seat-belt nonuse evidence (Massachusetts and Hawaii are unsettled on the matter and not included in either count), most states restrict the admission of such evidence for limited purposes, such as proof of comparative fault or to mitigate damages. The Texas Supreme

Court reasoned in *Romero* that the failure to use a seat belt does not *cause* an accident, but it also does not "immunize a plaintiff from his own injury-causing conduct." *Romero*, at 565. The court went on to overrule 40 years of possible windfalls for plaintiffs who are "likely to be punished with a criminal citation carrying a monetary fine from the police officer investigating the accident, but in the civil courtroom his illegal conduct will be rewarded by monetary compensation." *Id.* Texas's evidence rule is similar to Arizona, California, Florida, Michigan, New Jersey and North Dakota, which all permit evidence of seat-belt nonuse to prove comparative fault. *See* chart. However, these states do not allow evidence of seat-belt nonuse for purposes of reducing damages. As the *Romero* decision explains, a plaintiff's failure to mitigate damages traditionally occurs post-accident. Therefore, a plaintiff's pre-accident decision to not wear a seat belt should not be a factor in assessing the amount of damages incurred after the defendant's negligence. *Romero*, at 564.

The other twelve of nineteen states that allow seat-belt nonuse evidence limit its admission for the mitigation of damages. Some of these states allow unlimited damage reductions (Alaska, Kentucky, New York, and Tennessee), while others set relatively low damage-reduction caps. For example, under Iowa, Nebraska, and Oregon law, if the failure to wear a safety restraint contributed to a plaintiff's injuries, seat-belt nonuse may be admitted to mitigate damages, but the reduction in damages is capped at 5%. *See* chart. Wisconsin also caps its damages, but up to 15%, while Missouri only allows up to 1% of a damages award to be mitigated by seat-belt nonuse evidence. *See* chart. Ohio does not cap its reduction; instead, it limits the evidence to mitigate only noneconomic loss (like pain and suffering). *See* chart.

Colorado is even more limited, allowing nonuse evidence only to mitigate pain and suffering damages and only in product-liability cases. *See* chart. West Virginia may have the most unique procedure, wherein the trial judge may consider seat-belt nonuse *in camera* to determine whether an injured party's failure to wear a seat belt was a proximate cause of the injuries. If the judge finds that it was a proximate cause of the injuries, the jury will learn of the nonuse and may then reduce the recovery up to 5%. If the injured party stipulates to seat-belt nonuse and forgoes the *in camera* hearing, the judge automatically withholds 5% of any future damages award, but the jury never hears evidence of the seat-belt nonuse. *See* chart.

Admissibility of Seat-Belt Nonuse Evidence (by State)

Alabama	Inadmissible	Ala. Code § 32-5B-7
Alaska	Mitigation of damages	*Hutchins v. Schwartz*, 724 P.2d 1194, 1199 (Alaska 1986)
Arizona	Comparative fault	*Law v. Superior Court*, 755 P.2d 1135, 1145 (Ariz. 1988)
Arkansas	Product liability only	*Ark. Code Ann. § 27-37-703 (2008)*
California	Comparative fault	*Cal. Veh. Code § 27315(i)*
Colorado	Mitigation of damages for pain and suffering only	*Colo. Rev. Stat. § 42-4-237(7) (2009)*
Connecticut	Inadmissible	Conn. Gen. Stat. Ann. § 14-100a(c)(3)
Delaware	Inadmissible	Del. Code Ann. tit. 21, § 4802(i)
District of Columbia	Inadmissible	D.C. Code § 50-1807
Florida	Comparative fault	Fla. Stat. Ann. § 316.614(10)
Georgia	Inadmissible	Ga. Code Ann. § 40-8-76.1(d)
Hawaii	Unsettled (no common-law duty to wear seat belt to mitigate damages)	*Kealoha v. County of Hawai'i*, 844 P.d2d 263 (Haw. 1993).
Idaho	Inadmissible	Idaho Code Ann. § 49-673(8)
Illinois	Inadmissible	625 Ill. Comp. Stat. Ann. 5/12-603.1(c)
Indiana	Product liability only	Ind. Code § 9-19-10-7(b), and (c)
Iowa	Mitigation of damages up to 5%	Iowa Code Ann. § 321.445(4)

Kansas	Inadmissible	Kan. Stat. Ann. § 8-2504(c)
Kentucky	Mitigation of damages	*Wemyss v. Coleman*, 729 S.W.2d 174, 179 (Ky. 1987)
Louisiana	Inadmissible	La. Rev. Stat. Ann. § 32:295.1(E)
Maine	Inadmissible	Me. Rev. Stat. tit. 29-A, § 2081(3-A); 2458(3)
Maryland	Product liability only	Md. Code Ann., Transp. § 22-412.3(h), (i)
Massachusetts	Unsettled (no evidence to show seat-belt nonuse was causally related to injuries)	*Shahzade v. C.J. Mabardy, Inc.*, 586 N.E.2d 3 (Mass. 1992).
Michigan	Comparative fault up to 5%	Mich. Comp. Laws Serv. § 257.710e(7)
Minnesota	Product liability only	Minn. Stat. Ann. § 169.685(4)(a)
Mississippi	Inadmissible	Miss. Code Ann. § 63-2-3
Missouri	Mitigation of damages up to 1%	Mo. Ann. Stat. § 307.178(4)
Montana	Inadmissible	Mont. Code Ann. § 61-13-106
Nebraska	Mitigation of damages up to 5%	Neb. Rev. Stat. § 60-6,273
Nevada	Inadmissible	Nev. Rev. Stat. § 484D.495(4)(b), (c)
New Hampshire	Inadmissible	N.H. Rev. Stat. § 265: 107-aIV
New Jersey	Comparative fault	*Waterson v. General Motors Corp.*, 544 A.2d 357 (N.J. 1998)
New Mexico	Inadmissible	N.M. Stat. § 66-7-373(A)
New York	Mitigation of damages	N.Y. Veh. & Traf. Law § 1229-c(8)
North Carolina	Inadmissible	N.C. Gen. Stat. § 20-135.2A(d)
North Dakota	Comparative fault	*Day v. Gen. Motors Corp.*, 345 N.W.2d 349, 357 (N.D. 1984)
Ohio	Mitigation of damages for noneconomic loss and product liability	Ohio Rev. Code Ann. § 4513.263(F)
Oklahoma	Admissible	Okla. Stat. Ann. tit. 47, § 12-420
Oregon	Mitigation of damages up to 5%	Or. Rev. Stat. Ann. § 31.760
Pennsylvania	Inadmissible	75 Pa. Cons. Stat. § 4581(e)
Rhode Island	Inadmissible	R.I. Gen. Laws § 31-22-22 (h)
South Carolina	Inadmissible	S.C. Code Ann. § 56-5-6540(c)
South Dakota	Inadmissible	S.D. Codified Laws § 32-38-4
Tennessee	Product liability only	Tenn. Code Ann. § 55-9-604
Texas	Comparative fault	*Nabors Well Services, Ltd. v. Romero*, 456 S.W.3d (Tex. 2015)
Utah	Inadmissible	Utah Code Ann. § 41-6a-1806
Vermont	Inadmissible	Vt. Stat. Ann. tit. 23, § 1259(c), (d)
Virginia	Inadmissible	Va. Code Ann. § 46.2-1092, and 1094(D)
Washington	Inadmissible	Wash. Rev. Code Ann. § 46.61.688(6)
West Virginia	Inadmissible generally*	W. Va. Code Ann. § 17C-15-49(d)
Wisconsin	Mitigation of damages up to 15%	Wis. Stat. Ann. § 347.48(2m)(g)(West 2005 & Supp. 2010)
Wyoming	Inadmissible	Wyo. Stat. Ann. § 31-5-1402(f) (2011)

* However, under certain circumstances, when it can be shown that such a violation was the proximate cause of injuries, such evidence may be admitted to reduce medical damages by not more than 5%.

Use of Out-of-State Prior Convictions to Enhance the Penalty of a Current Conviction

When an individual is convicted of driving under the influence in their home state or elsewhere, that conviction may be used to enhance the penalty of subsequent DUI charges. This happens in one of two ways. Prior convictions may be used to enhance the charge (i.e., making it a felony rather than a misdemeanor) and the penalty, or prior convictions may impact licensing, with the DMV using prior convictions as a basis for license suspension. Both scenarios require the same analysis to determine whether a prior out-of-state conviction may serve as a predicate conviction for current purposes. Only if there is *substantial* similarity and *substantial* conformity between the relevant laws of the two states can the out-of-state prior conviction be used to enhance the current conviction. Additionally, the record of conviction must be sufficient to allow the current state to determine that the predicate facts would have supported a conviction in the current state. Only if the prior out-of-state offense would have served as a basis for a conviction in the home state can it be used to enhance the penalty of a current conviction. How states treat out-of-state prior convictions varies from state to state and case to case, as each case requires an individual analysis of the out-of-state law that the individual was convicted of violating as compared with the comparable current state law.

Enhancing Charges/Penalties

Indiana: In *State v. Akins* the defendant was arrested in Indiana for DUI and charged with a felony under Ind. Code § 9-30-5-3.[1] According to the Code, the offense constitutes a class D felony—with greater penal consequences—if the person operating a vehicle while intoxicated has a previous DUI conviction within the last five years. The predicate offense for Akins's felony charge was a 1999 Michigan conviction for operating a vehicle while intoxicated (under Mich. Comp. Laws § 257.625(1)).

The issue was whether the Michigan law and the Indiana law were substantially similar such that Akins's prior conviction in Michigan would subject him to the class D felony charge. In reaching the conclusion that the two statutes were substantially similar, the Indiana Supreme Court emphasized that for purposes of establishing substantial similarity, the correct comparison is between the Michigan statute at the time of the Michigan offense and the Indiana statute at the time of the Indiana offense. It did not matter what the Indiana statute was at the time of the Michigan offense. Applying those guidelines to their analysis, the court found that although the two state statutes were phrased differently, they describe elements that were substantially similar.

Virginia: In *Corey v. Commonwealth* the defendant was convicted upon a guilty plea of driving while intoxicated, in violation of Va. Code. Ann. § 18.2-266.[2] Corey had previously been convicted in a federal court (Eastern District of Virginia) for DWI (1995) and in a state court (Fairfax County) for DWI (1997). The trial court, finding that his prior federal conviction for DWI was a proper predicate offense for enhancement purposes, imposed an enhanced sentence under Va. Code Ann. § 18.2-270(C). Va. Code Ann. § 18.2-270(C), a recidivist statute, enhances the sentence of a defendant convicted of three or more Va. Code Ann. § 18.2-266 offenses within ten years from a misdemeanor to a felony.

Corey argued that the federal regulation, 36 C.F.R. §4.23(a)(2), was not substantially similar to Va. Code. Ann. § 18.2-266, as it criminalized conduct that the Virginia statute did not, and that, therefore, this should only be a misdemeanor, as it was his second offense within five years. In concurring with the defendant and reversing the decision of the trial court, the Court of Appeals of Virginia analyzed the similarity of the

[1] *State v. Akins*, 824 N.E.2d 676 (Ind. 2005)
[2] *Corey v. Commonwealth*, 2003 Va. App. LEXIS 582 (2003).

statutes under the principle that "if a person may be convicted of an offense under another jurisdiction's statute for conduct which might not result in a conviction under [a Virginia statute], the statutes are not 'substantially conforming.'"[3] The court found that due to the differences in the two statutes and the lack of specificity in the conviction record, it could not conclude that a violation in one would be a violation in another, and, therefore, the prior federal conviction could not be used as a predicate offense for purposes of sentencing enhancement.

In *Shinault v. Commonwealth* the defendant was convicted of drunk driving and punished under Virginia Code § 18.2-270 as a third-time offender.[4] One of Shinault's prior convictions was in North Carolina. After carefully analyzing whether the North Carolina statute under which he was convicted, N.C. Gen. Stat. § 20-138(b), was substantially similar to the corresponding Virginia statute, Virginia Code § 18.2-269(3), so that it would suffice as a prior conviction, the Supreme Court of Virginia held that the two statutes were not substantially conforming, as the North Carolina statute required a conclusive presumption of guilt when the offender possessed a blood alcohol level of .10, while the Virginia statute allowed for a rebuttable presumption of guilt under the same circumstances. Though there was a general likeness between the two statutes, the differing effect of the two presumptions was substantial, and, therefore, the North Carolina conviction should not have been considered a prior offense.

South Dakota: In *State v. Ducheneaux* the defendant was charged with DUI, and an information was filed alleging that this was his third DUI offense (one of the prior offenses being a 2003 Colorado conviction).[5] At issue was whether a conviction under Colorado's driving-while-ability-impaired statute (DWAI) could be considered a prior driving-under-the influence offense under S.D. Codified Laws § 32-23-4.5. According to SDCL § 32-23-4.5, any prior offense committed by a defendant in any state in the past ten years may be considered a prior offense as long as it would have been a violation of SDCL § 32-23-1 if committed in this state. In reversing the circuit court's decision striking the information, the South Dakota Supreme Court found that although the South Dakota statute did not define the under-the-influence offense in detail like Colorado's DWAI statute, "[t]hey are substantially similar because, like our common-law definition, the Colorado statute only requires that the alcohol 'affect[s] the person to the slightest degree so that the person is less able than the person ordinarily would have been, either mentally or physically, or both mentally and physically, to exercise clear judgment, sufficient physical control, or due care in the safe operation of a vehicle.'"[6] Concluding that the circuit court incorrectly focused on considerations that were not relevant to determining whether the elements of the two statutes were substantially similar, the South Dakota Supreme Court held that Colo. Rev. Stat. § 42-4-1301(1)(g) was substantially similar to S.D. Codified Laws § 32-23-1(2), and that the Colorado conviction could be considered a prior offense for enhancement purposes.

Impacting Licensing

California: In *Moles v. Gourley*, after Moles was convicted of a DUI in California, the California DMV suspended his driver's license, basing its decision to do so on a previous Virginia DWI conviction.[7] After the Santa Clara County Superior Court concluded there was insufficient evidence that the conviction was for drunk driving and granted a writ to set aside the suspension, the Court of Appeal of California reversed and remanded with an order to reinstate the suspension.

California and Virginia are both party to the Driver License Compact, which provides for reciprocal treatment of out-of-state convictions as long as 1) a substantially similar statute exists in the two states, 2) there is sufficient proof of the driver's violation of the statute, and 3) that not only the substance, but also the interpretation and enforcement of the law in the reporting state is substantially the same as that in the home state. In determining that the Virginia statute, Va. Code Ann. § 18.2-266, and the California statute, Veh. Code § 23152, were substantially similar, the court compared the two laws, focusing on the differences in the two states' laws concerning the conduct the laws address and the types of vehicles that are covered. Though the Virginia statute was found to be broader than California's, ignoring the nonrelevant portions of the statutes and comparing only the compact-specific portions, the court found the two statutes to be substantially the same with respect to the conduct that they prohibit — driving a motor vehicle while intoxicated. They also found that the Virginia record that the DMV relied on when suspending Moles's

[3] *Id.* at 7.
[4] *Shinault v. Commonwealth*, 228 Va. 269 (1984).
[5] *State v. Ducheneaux*, 2007 SD 78.
[6] *Id.* at P4.
[7] *Moles v. Gourley*, 112 Cal. App. 4th 1049 (2003).

license provided adequate proof that he was convicted for drunk driving in Virginia. Therefore, the court held that "[t]he Virginia conviction thus is entitled to reciprocal treatment in California under the Driver License Compact," and suspension of Moles's license was proper.[8]

Virginia: In *Robertshaw v. Commonwealth* Robertshaw pled guilty to driving under the influence of alcohol in violation of 36 C.F.R. Sec 4.23(a)(1), the federal DUI regulation.[9] The Virginia DMV revoked his driver's license for a year pursuant to Va. Code Ann. § 46.2-389, and he appealed, arguing that the federal regulation did not substantially parallel or conform to the Virginia statute, Va. Code Sec. 18.2-266. "The issue before the Court is whether the Commissioner erred in determining that the federal DUI statute under which the Petitioner was convicted, 36 C.F.R. Sec 4.23(a)(1), substantially parallels and substantially conforms to the Virginia DUI statute, Va. Code Sec. 18.2-266."

The court relied on *Cox v. Commonwealth* and determined that the state law and federal regulation had common characteristics and were largely alike in substance.[10] Though they were not identical, they need not have been — they only had to substantially conform. Because the relevant portions of the state law and federal regulation were substantially similar and conformed, revocation of the driving privileges was not manifestly unjust. In *Cox v. Commonwealth*, Cox appealed a finding by the trial court that he was a habitual offender under Va. Code § 46.2-351. The appellate court reversed, finding that this determination was an error because the out-of-state (West Virginia) statute included several prohibitions that would not be violations under the home state (Virginia) statute and because the record of conviction from West Virginia was not specific enough to allow the court to determine that his conduct was included among Virginia's prohibitions. As there was not substantial conformity between the two statutes and the record of conviction was inadequate, the West Virginia conviction could not be used to find the defendant to be a habitual offender.

[8] *Id.* at 1061.
[9] *Robertshaw v. Commonwealth*, 86 Va. Cir. 426 (2013).
[10] *Id.* at 432, citing *Cox v. Commonwealth*, 13 Va. App. 328 (1991).

Alcohol-Provider Liability

In addition to laws prohibiting underage consumption of alcohol and driving while intoxicated, many states have found another way to curtail the epidemic of impaired-driving traffic accidents. Forty-five states plus the District of Columbia impose civil liability on certain providers of alcohol when specific classes of individuals who consume the alcohol of the provider injure third parties. This liability most often exists because of so-called dram-shop acts, though some states have established a cause of action based on judicial precedent. While some states only allow for civil liability of licensed alcohol providers, more than half of states also impose civil liability on social hosts if certain individuals become intoxicated under their watch and subsequently injure a third party. This liability supplements the already existing liabilities (almost all of them criminal, though two states provide only civil penalties) for providing alcohol to minors.

All forty-five states plus D.C. that impose civil liability on providers of alcohol under certain circumstances impose liability on licensed vendors of alcohol for the actions of improperly served patrons. These original dram-shop laws almost all provide that licensed vendors of alcohol who serve known minors or visibly intoxicated individuals are liable for any injury these people may cause as a result of their intoxication. Most states will allow affirmative defenses to selling a minor alcohol if the minor provided identification that would suggest that he or she was of legal drinking age. Delaware, Kansas, Maryland, South Dakota, and Virginia are the five states that do not statutorily impose any civil liability on licensed alcohol distributors, and none of these states provide for civil liability for social hosts who provide alcohol to guests.

Twenty-nine states that have these dram-shop laws extend their reach to include social hosts who provide alcohol to their guests. Unlike the scope of the laws as they apply to licensed alcohol vendors, not all of these states impose liability for serving both minors and visibly intoxicated people. Seventeen states only impose liability on social hosts for the actions of minors who become intoxicated and then injure a third party, while two only impose liability for people who continue to be served after they are visibly intoxicated. Nine states impose liability in both situations. North Carolina's case law suggests liability in that state could possibly be extended to all patrons who leave intoxicated and injure someone, though the matter is left to judicial discretion. Other provisions for social-host liability include situations in which guests are either forcibly induced to consume alcohol or are told that their drinks do not contain alcohol (Mississippi and Montana), situations in which alcoholic beverages were provided recklessly (New Mexico), and times when "incompetents" are allowed to become intoxicated (North Dakota).

This exposure to liability is not the only way states hold social hosts accountable for providing alcohol to minors, however. All fifty states plus D.C. have some legal punishment for those who provide alcohol to people under the drinking age. Forty-nine states plus D.C. impose a criminal punishment for providing alcohol to minors. Most states make this a separate, individual offense, but some states include the provision of alcohol as one of the activities that allow offenders to be charged with contributing to the delinquency of a minor. Three of these forty-nine states (Arizona, Florida, and Wisconsin) also allow for the suspension of a social host's driver's license. Maryland only punishes the provision of alcohol to minors with a civil citation.

Alcohol-Provider Liability (by State)

State	Civil Liability of Vendors	Host Liability for Third-Party Injury?	Class of People for Host Liability?	Punishment for Providing to Minors	Liable for Third-Party Injury
Alabama	Yes	Yes	Minors	Civil & Criminal	Vendor & Host
Alaska	Yes	Yes	Minors	Criminal	Vendor & Host
Arizona	Yes	No	n/a	Civil & Criminal	Only Vendor
Arkansas	Yes	No	n/a	Criminal	Only Vendor
California	Yes	No	n/a	Criminal	Only Vendor
Colorado	Yes	Yes	Minors	Criminal	Vendor & Host
Connecticut	Yes	Yes	Minors	Criminal	Vendor & Host
Delaware	No	No	n/a	Criminal	No Liability

State	Civil Liability of Vendors	Host Liability for Third-Party Injury?	Class of People for Host Liability?	Punishment for Providing to Minors	Liable for Third-Party Injury
District of Columbia	Yes	No	n/a	Criminal	Only Vendor
Florida	Yes	No	n/a	Civil & Criminal	Only Vendor
Georgia	Yes	Yes	Minors & Intoxicated Individuals	Criminal	Vendor & Host
Hawaii	Yes	Yes	Minors	Criminal	Vendor & Host
Idaho	Yes	Yes	Minors & Intoxicated Individuals	Criminal	Vendor & Host
Illinois	Yes	No	n/a	Criminal	Only Vendor
Indiana	Yes	Yes	Intoxicated Individuals	Criminal	Vendor & Host
Iowa	Yes	Yes	Minors	Criminal	Vendor & Host
Kansas	No	No	n/a	Criminal	No Liability
Kentucky	Yes	No	n/a	Criminal	Only Vendor
Louisiana	Yes	No	n/a	Criminal	Only Vendor
Maine	Yes	Yes	Minors & Intoxicated Individuals	Criminal	Vendor & Host
Maryland	No	No	n/a	Civil	No Liability
Massachusetts	Yes	Yes	Minors & Intoxicated Individuals	Criminal	Vendor & Host
Michigan	Yes	Yes	Minors & Intoxicated Individuals	Criminal	Vendor & Host
Minnesota	Yes	Yes	Minors	Criminal	Vendor & Host
Mississippi	Yes	No	n/a	Criminal	Only Vendor
Missouri	Yes	No	n/a	Criminal	Only Vendor
Montana	Yes	Yes	Minors & Intoxicated Individuals	Criminal	Vendor & Host
Nebraska	Yes	Yes	Minors	Criminal	Vendor & Host
Nevada	Yes	Yes	Minors	Criminal	Vendor & Host
New Hampshire	Yes	Yes	Minors & Intoxicated Individuals	Criminal	Vendor & Host
New Jersey	Yes	Yes	Intoxicated Individuals	Criminal	Vendor & Host
New Mexico	Yes	No	n/a	Criminal	Only Vendor
New York	Yes	Yes	Minors	Criminal	Vendor & Host
North Carolina	Yes	Yes	All	Criminal	Vendor & Host
North Dakota	Yes	Yes	Minors & Intoxicated Individuals	Criminal	Vendor & Host
Ohio	Yes	Yes	Minors	Criminal	Vendor & Host

State	Civil Liability of Vendors	Host Liability for Third-Party Injury?	Class of People for Host Liability?	Punishment for Providing to Minors	Liable for Third-Party Injury
Oklahoma	Yes	No	n/a	Criminal	Only Vendor
Oregon	Yes	Yes	Minors & Intoxicated Individuals	Criminal	Vendor & Host
Pennsylvania	Yes	Yes	Minors	Criminal	Vendor & Host
Rhode Island	Yes	No	n/a	Criminal	Only Vendor
South Carolina	Yes	No	n/a	Criminal	Only Vendor
South Dakota	No	No	n/a	Criminal	No Liability
Tennessee	Yes	No	n/a	Criminal	Only Vendor
Texas	Yes	Yes	Minors	Criminal	Vendor & Host
Utah	Yes	Yes	Minors	Criminal	Vendor & Host
Vermont	Yes	Yes	Minors	Criminal	Vendor & Host
Virginia	No	No	n/a	Criminal	No Liability
Washington	Yes	No	n/a	Criminal	Only Vendor
West Virginia	Yes	No	n/a	Criminal	Only Vendor
Wisconsin	Yes	Yes	Minors	Civil & Criminal	Vendor & Host
Wyoming	Yes	Yes	Minors	Criminal	Vendor & Host

Sobriety Checkpoints

In *Michigan Dep't of State Police v. Sitz*, 496 U.S. 444 (1990), the U.S. Supreme Court upheld the constitutionality of a Michigan sobriety checkpoint program. The Court cited *Brown v. Texas*, 443 U.S. 47 (1979), and *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976), as its controlling precedent. The Court adapted the *Brown* "reasonableness" factors to deal with sobriety checkpoints and said that "the balance of the State's interest in preventing drunken driving, the extent to which this system can reasonably be said to advance that interest, and the degree of intrusion upon individual motorists" supported the constitutionality of the roadblocks. *Sitz*, 496 U.S. at 455. The Court divided its consideration of the intrusion upon individual motorists and considered both the time intrusion and any apprehension the checkpoints might have caused, and it decided that the imposition upon motorists was slight and easily outweighed by the state's interest in preventing the "slaughter" on roadways. *Id.* at 451 (quoting *Breithaupt v. Abram*, 352 U.S. 432, 439 (1957)). However, the court also referenced its decision in *Delaware v. Prouse*, 440 U.S. 648 (1979), which forbade random and unstructured stops. Furthermore, Chief Justice Rehnquist noted in the opinion upholding the program's constitutionality the fact that Michigan publicized the stops before they occurred.

Since the *Sitz* decision was handed down, most states have made controlling determinations on the constitutionality of sobriety checkpoints as controlled by their own laws in addition to the U.S. Constitution and U.S. Supreme Court precedent. Thirty-seven states plus Washington, D.C. currently permit sobriety checkpoints. Of these states (and D.C.), thirty-three have upheld the constitutionality of checkpoints through case precedent. Almost all state court cases upholding sobriety roadblocks, even the cases decided before the Supreme Court decided *Sitz*, use a *Brown*-esque balancing test to weigh the invasion of personal liberty against the state interest in protecting its citizens from drunk drivers. These tests, whether justified under federal or state constitutional principles, always come down in favor of the state's interest in keeping its roads safe. Six states have legalized sobriety checkpoints by statute (Vermont has used both case law and legislation to uphold them).

A minority of jurisdictions do not permit or address sobriety checkpoints. Eleven states have prohibited sobriety checkpoints altogether. Eight states have found them to be unconstitutional under state constitutional principles; four states have statutorily prohibited them (Iowa does both). Some of the states that have struck down sobriety checkpoints have struck them down because there was no express statute permitting them or force of law to justify their existence, suggesting that if such statutes were eventually passed, the checkpoints might be permissible. Two states, Alaska and South Carolina, have no case law or statute dealing with sobriety checkpoints, although a South Carolina Supreme Court case from 2008 references sobriety checkpoints, suggesting that they might be allowable under South Carolina law.

Sobriety Checkpoints Statutes and Caselaw

States That Permit Sobriety Checkpoints by Court Decision	(32 states + D.C.) Alabama, Arizona, Arkansas, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Mississippi, Missouri, Nebraska, New Jersey, New Mexico, New York, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, West Virginia
States That Permit Sobriety Checkpoints by Statute	(6 states) California, Nevada, New Hampshire, North Carolina, Utah, Vermont
States That Prohibit Sobriety Checkpoints By Court Decision	(8 states) Idaho, Iowa, Michigan, Minnesota, Oregon, Rhode Island, Texas, Washington
States That Prohibit Sobriety Checkpoints by Statute	(4 states) Iowa, Montana, Wisconsin, Wyoming
States That Have No Law Applicable To Sobriety Checkpoints	(2 states) Alaska, South Carolina

What Constitutes Driving?

Depending on which state you are in, different standards apply to what constitutes "driving" in the event you are questioned pursuant to a possible DWI/DUI. For the purposes of this brief, we are ignoring cases where the driver is in a moving vehicle on a roadway and pulled over based upon some reasonable grounds. The vast majority of those DWI/DUI cases show the similarities of laws from state to state. However, case law surrounding one factual difference is still being tossed about: when the driver is in the driver's seat and the motor vehicle is stationary. A typical case is where the accused is found by police in a parked car, inebriated, with or without the keys in the ignition.

Some state courts have attempted to simplify the analysis of "stationary-vehicle" DWI/DUI cases by outlining the most common factors at play and then examining them based on the totality of the circumstances. Most important to courts in such decisions are undoubtedly the traditional policy considerations: the balance of fairness to the defendant in light of protection of the public from impaired drivers. An example of the factors being considered are outlined in *State v. Zaragoza*[11]:

1. Was the driver awake?
2. Was the engine running or the ignition on?
3. Where were the keys?
4. Where was the driver located?
5. Were the headlights on?
6. What time of day or night was it?
7. Was the vehicle legally parked or was it on a road?
8. Was the heater or air conditioner on?
9. Were the windows up or down?
10. What was the defendant's version of events?

The following are typical situations in which courts deliberate the nature of "driving."

Defendant Found Asleep/Unconscious Behind the Wheel with Engine Off

Generally, courts tend to view an unconscious driver behind the wheel with the engine off as insufficient proof of "driving."[12] However, as stated, courts will look at the totality of the evidence at issue and make a judgment based upon the state's DUI statute and relevant case law. For example, most recently, the Montana Supreme Court confirmed, in *State v. Rand*,[13] that a person who is sleeping behind the wheel of a running vehicle has "physical control of the vehicle." In *State v. Lawrence*,[14] the Tennessee Supreme Court held that a defendant who was asleep on the driver's side of the vehicle parked on a public roadway with the keys to the vehicle in his pants pocket had "physical control" of the vehicle for the purposes of the state statute. Similarly, the New Mexico Court of Appeals, in *State v. Yellowman*,[15] held that the defendant was in "physical control" of the vehicle when he was found in the driver's seat of the vehicle with keys in his pants pocket.

Defendant Found Asleep/Unconscious Behind the Wheel with Engine On

When the defendant is unconscious behind the wheel and the engine is running, counsel may have a more difficult time attacking the sufficiency of the evidence. One court may find this to be sufficient circumstantial evidence of driving, while another may decide that driving requires the driver to be conscious, the vehicle to be in motion, or both.[16] An example of the differing views is seen in the 2013 New Jersey Appellate Division of the Superior Court case of *State v. Bennett*,[17] where the court reversed a conviction in which the defendant was found slumped over the wheel of a car idling in a Wawa parking lot. There, the court held that the officer had made a constitutionally impermissible search that led to the exclusion of evidence that had formed the basis for a conviction at trial. Similarly, the Indiana Court of Appeals, in *Hiegel v. State*,[18] consulted the dictionary definition to determine that a defendant asleep in his vehicle with the engine running and the lights on was not "operating" it. The court there reasoned that the defendant had "become a passive occupant" who did not attempt to "operate" the vehicle.

[11] *See State v. Zaragoza*, 209 P.3d 629 (Ariz. 2009).
[12] *See People v. Nelson*, 246 P.3d 301 (Cal. 2011).
[13] *See State v. Rand*, 2014 MT 19N (Mont. 2014).
[14] *See State v. Lawrence* 849 S.W. 2d 761 (Tenn. 1993); *see also State v. Zaragoza*, 209 P.3d 629 (Ariz. 2009).
[15] *See State v. Yellowman*, 148 N.M. 611, 241 P.3d 612 (N.M. 2010).
[16] Lawrence Taylor & Steve Oberman, Drunk Driving Defense 18 (7th ed., 2010).
[17] *See State v. Bennett*, No. A-6044-10T4, 2013 N.J. Super, Lexis 2972 (App. Division. Dec. 18, 2013).
[18] *See Hiegel v. State*, 538 N.E.2d 265 (1989); *followed* in *Nichols v. State*, 783 N.E.2d 1210, (2013).

Conscious (Engine on), Stationary Vehicle

Furthermore, some state courts have held that there must be some actual movement of the vehicle for the facts to constitute driving or operating. Defendants have a much more difficult burden of proof in situations where they are behind the wheel of a running vehicle and their only a gear shift away from being behind the wheel of a moving vehicle. That said, in *Mercer v. Department of Motor Vehicles*,[19] the California Supreme Court was confronted with a case where the defendant was unsuccessfully attempting to put his running vehicle in gear. The court held that there must be some actual volitional movement of the vehicle by the defendant to amount to "driving."

Other instances often seen in states with cold winter climates are where the vehicle is purportedly being used as a temporary shelter from the elements. In *State v. Willard*[20] the New Hampshire Supreme Court held that a defendant found asleep in a vehicle with the engine running was not in actual physical control because the court reasoned that the main focus should be on whether the vehicle was being used as a temporary shelter against the weather or whether it was reasonable to assume that there was an imminent danger he was about to drive.

[19] *See Mercer v. Department of Motor Vehicles*, 53 Cal 3d. 753 (1991); *see* also *People v. Nelson*, 200 Cal. App. 4th 1083 (2011).
[20] *See State v. Willard*, 660 A.2d 1086 (N.H. 1995); *see* also *State v. Natoli*, 2007 N.H., Lexis 262, (N.H. Dec. 7 2007).

All Blood Is Not the Same: Whole Blood v. Serum/Plasma/ Supernatant in BAC

When it comes to BAC analysis in DUI cases, not all blood is the same. There is whole blood, sometimes referred to as "legal blood," and then there is serum/plasma/supernatant, sometimes referred to as "medical blood." Many people may not know that there are differences between these various blood samples (and if they do, they may not understand why it matters) and that these differences can be significant when it comes to DUI prosecutions. It is important for attorneys and judges to understand these differences and why they are important.

Legal Blood v. Medical Blood: What Is the Difference?

"Legal blood" is blood that has not been broken down into its solid and liquid components — it is whole. By contrast, "medical blood" is the result of separating whole blood into its solid and liquid components. When medical blood is tested, the testing is done on only a portion of the blood. Most commonly, that testing is done on the serum or plasma. Serum comes from whole blood that has not been treated with an anticoagulant, and it is the liquid that remains once the blood cells and other particulate matter have been removed.[21] Plasma comes from whole blood that has been treated with an anticoagulant, and, like serum, is the liquid that remains once the blood cells have been removed.[22] Occasionally, the testing is done on the supernatant, the clear liquid that results from having precipitated proteins from the blood sample and centrifuging it.[23]

Why the Blood Sample Matters in DUI Cases

While blood samples in DUI cases are generally analyzed as whole blood, this is not always the case.[24] Blood alcohol testing that is done in hospitals (usually on blood taken for medical purposes) is often performed on the serum or plasma. It is important to find out whether the whole blood or serum/plasma was tested, because the difference will impact the reported BAC.

Depending on whether whole blood or serum/plasma is tested can have a significant impact on the reported blood alcohol concentration of an individual. The significance of the difference varies from study to study (and, frankly, from individual to individual),[25] but generally blood alcohol concentrations in plasma or serum are higher than those in whole blood. One study, *Distribution of Ethanol: Plasma to Whole Blood Ratios*, concluded that "[b]lood-alcohol concentrations in plasma were approximately 11 percent higher than that of whole blood, and those in supernatant samples were about 5 percent higher."[26] Another study, *Blood Alcohol Testing in the Clinical Laboratory: Problems and Suggested Remedies*, found that disparity can be even higher, up to 20 percent higher, in serum-alcohol concentration[27] than in whole-blood-alcohol concentration. The reason for the difference in BAC results is that serum and plasma (which can be expected to have equivalent alcohol concentrations) contain more water than whole blood.[28] Since alcohol has an affinity for water, the BAC in serum and plasma will be higher than the BAC in whole blood.[29] Since there are different types of blood

---

[21] Alcohol Toxicology for Prosecutors: Targeting Hardcore Impaired Drivers (American Prosecutors Research Institute, July 2003); *Commonwealth v. Newsome*, 787 A.2d 1045 (Pa. 2001).
[22] Alcohol Toxicology for Prosecutors, *Id.*
[23] Lawrence Taylor & Steven Oberman, Drunk Driving Defense (Wolters Kluwer Law & Business 2010).
[24] *Id.*
[25] *Id. See also Challenges and Defenses II: Claims and Responses to Common Challenges and Defenses in Driving While Impaired Cases,* National Traffic Law Center (March 2013).
[26] Brian T. Hodgson & Nizar K. Shajani, *Distribution of Ethanol: Plasma to Whole Blood Ratios,* 18 Canadian Soc'y Forensic Sci. J. *(1995).*
[27] Walter J. Frajola, *Blood Alcohol Testing in the Clinical Laboratory: Problems and Suggested Remedies*, 39 Clinical Chemistry 377-379 (1993).
[28] *Challenges and Defenses II, supra* note 5.
[29] *People v. Thoman*, 770 N.E.2d 228 (Ill. App. 2002).

samples that may have been tested, it is important for attorneys and judges to know which one was used in a particular case so that, if necessary, the appropriate conversion factor can be applied.

How Courts Have Handled the Variation in Blood Samples

Though the term "blood," as used in the statutes, is typically not defined, courts have generally accepted that it refers to whole blood.[30] As such, for a defendant to be found guilty of DUI, the evidence must show that his whole-blood BAC violates the statute. If whole blood was not tested, BAC results of a serum, plasma, or supernatant analysis are admissible at trial; however, the State must convert the results of the serum/plasma/supernatant test into its whole-blood equivalent.[31] "Evidence offered of a reading based upon a test of blood serum [plasma or supernatant] without conversion, will not suffice."[32]

While there is no single mathematical formula for converting a plasma, serum, or supernatant BAC reading into a whole-blood BAC reading, "[m]ost experts agree that if one has a serum [or plasma] sample, a reliable estimate of the whole blood alcohol content can be obtained by dividing the serum [or plasma] alcohol concentration by 1.14 to 1.16."[33] There will be some variance due to individual blood chemistry, i.e., differing ratios between serum and whole blood due to the water content of each sample.[34] However, erring on the side of caution, it is not uncommon for experts to divide by a more conservative number of 1.20.[35] Experts will also often introduce a high-end conversion factor and a low-end conversion factor "to get a range of potential whole blood alcohol levels from Defendant's blood serum sample."[36] At least one state, Illinois, has done away with the guesswork by establishing a fixed value for the conversion factor. In Illinois, the concentration of alcohol in blood serum or blood plasma should be "divided by 1.18 to obtain a whole blood equivalent."[37]

---

[30] *See e.g.*, *People v. Thoman*, 770 N.E.2d 228 (Ill. App. 2002).
[31] *People v. Thoman*, 770 N.E.2d 228 (Ill. App. 2002).
[32] *Commonwealth v. Haight*, 50 A.3d 137 (Pa. Super. 2012); *Commonwealth v. Hutchins*, 42 A.3d 302 (Pa. Super. 2012); *Commonwealth v. Bartolacci*, 598 A.2d 287 (Pa. Super. 1991).
[33] *Watson v. State*, 2013 Alas. App. LEXIS 133 (2013); *Challenges and Defenses II*, supra note 5. Unlike the conversion rates for plasma or serum, the conversion rate for supernatant is less clear; however, it is generally accepted to be lower (one study said approximately 1.05), as supernatant is more similar to whole blood.
[34] *Commonwealth v. Newsome*, 787 A.2d 1045 (Pa. 2001); see also *Watson v. State*, 2013 Alas. App. LEXIS 133 (2013).
[35] *Challenges and Defenses II, supra* note 5.
[36] *Commonwealth v. Newsome*, 787 A.2d 1045, 1049 (Pa. 2001).
[37] 20 Ill. Admin. Code § 1286.40 (2012).

Refusal of Implied Consent

In almost every state plus Washington, D.C., people arrested for impaired driving are permitted by law to refuse chemical testing of their blood, breath, or urine.[38] Forty-six states plus the District of Columbia permit such a refusal to be admitted into evidence in legal proceedings against these arrestees (though some states limit this to just criminal prosecutions). Of these forty-six states, three states (Maryland, Michigan, and Virginia) constrict the scope of the admissibility of this refusal. These three states permit the refusal of a chemical test to be introduced into evidence to explain why the test results are unavailable, rather than just as proof of guilt or innocence. Rhode Island permits the evidence of refusal to be admitted only if the defendant chooses to testify — otherwise, it remains inadmissible. Three states (Massachusetts, New Mexico, and Wyoming) simply do not permit an individual's refusal to submit to testing into the record under any circumstances.

While individuals are permitted to refuse these chemical tests, forty-nine states plus D.C. impose some sort of penalty for doing so. Having repealed the relevant statutes in 2011, Wyoming is the only state not to punish drivers for refusing to submit to tests to determine their intoxication. Forty-one states plus D.C. impose a civil penalty upon drivers who do not submit to testing. This penalty almost always takes the form of a license suspension or revocation. Some states also include (either in addition to the suspension or in lieu of it) measures such as fines (numerous states), community service (Rhode Island), and alcohol education or rehabilitation programs (see Kentucky's statute, among others). Seven states (Alaska, Indiana, Louisiana, Mississippi, Oregon, Rhode Island, and Virginia) impose both criminal and civil penalties for refusing a test, and Kansas only imposes a criminal penalty for doing so. In the states that impose some sort of criminal penalty for refusing to comply with testing, first-time offenses are just considered to be an "offense" or an "infraction;" refusal to comply with testing does not become a misdemeanor until the offender repeats a refusal or has a prior DWI conviction and refuses testing.[39]

Thirty-nine states (and D.C.) of the forty-nine (plus D.C.) states that punish people for refusing to submit to chemical testing have provisions by which the penalty for refusing after a prior refusal or DWI conviction increases the offender's penalty for doing so. States have a wide range of punishments for first refusals; in Kentucky, it is possible to receive as little as 30 days of license suspension for refusing to submit to chemical testing, while in Hawaii, the minimum punishment for refusal is two years of revocation. Some states eventually provide for a lifetime suspension, while other states cap their punishment at two or three years. Many states allow for the mitigation of a sentence by installing an ignition interlock in the offender's car, while other times, the interlock will be installed concurrently with the offender's license suspension or other penalty.

Treatment of Refusal of Implied Consent (by State)

State	Refusal Admitted As Evidence?	Statute / Justification	Penalty for Refusal?	Statute	Civil or Criminal?
Alabama	Yes	Code of Ala. § 32-5-192	License suspension - 1st time, 90 days // 2nd (or additional) time (within 5 years), 1 year	Code of Ala. § 32-5-192(c) & § 32-5A-300(b)	Civil
Alaska	Yes	Alaska Stat. § 28.35.032	Is an infraction; possible suspension or revocation of license	Alaska Stat. § 28.35.031 & 28.35.032	Civil & Criminal
Arizona	Yes	A.R.S. § 28-1388	License suspension - 1st time, 90 days // 2nd (or additional) time (within 7 years), 2 years	A.R.S. § 28-1321	Civil

[38] Nevada seems to be the only exception to this rule—law enforcement there may seize someone's license and arrest them for purposes of a chemical test.
[39] Ohio may be an eighth state that also imposes some sort of criminal penalty for refusing to comply with testing, but its statutory language is circuitous and unclear.

State	Refusal Admitted As Evidence?	Statute / Justification	Penalty for Refusal?	Statute	Civil or Criminal?
Arkansas	Yes	*Medlock v. State*, 964 S.W.2d 196 (Ark. 1998); *Spicer v. State*, 799 S.W.2d 562 (Ark.App. 1990); *Weaver v.City of Fort Smith*, 777 S.W.2d 867 (Ark. App. 1989)	License suspension - 1st time, 180 days (unless an interlock is installed) // 2nd time (within 5 years) - 2 years // 3rd time - 3 years // 4th (or additional) refusal - Revocation for life	A.C.A. § 5-65-205	Civil
California	Yes	Cal Veh Code § 23612	License suspension - 1st time, 1 year; 2nd time (within 10 years) - 2 years; 3rd (or additional) refusal - 3 years	Cal Veh Code § 23612	Civil
Colorado	Yes	C.R.S. 42-4-1301	License suspension - 1st time, 1 year; 2nd time - 2 years; 3rd (or additional) refusal - 3 years	C.R.S. 42-2-126	Civil
Connecticut	Yes	Conn. Gen. Stat. § 14-227a	License suspension - 1st time, 6 months; 2nd time - 1 year; 3rd (or additional) refusal - 3 years	Conn. Gen. Stat. § 14-227b	Civil
Delaware	Yes	21 Del. C. § 2749	License suspension - 1st time, 1 year; 2nd time - 18 months; 3rd (or additional) refusal - 2 years	21 Del. C. § 2742	Civil
District of Columbia	Yes	D.C. Code § 50-1905	License suspension - 1 year	D.C. Code § 50-1905	Civil
Florida	Yes	Fla. Stat. § 316.1932	License suspension - 1st time, 1 year; 2nd time (or additional) - 18 months	Fla. Stat. § 316.1932	Civil
Georgia	Yes	O.C.G.A. § 40-6-392	License suspension - 1 year	O.C.G.A. § 40-5-67.1	Civil
Hawaii	Yes	HI ST § 291E-65	License suspension - 1st time, 2 years; 2nd time (within 5 years) - 3 years; 3rd time (within 5 years) - 4 years; 4th (or subsequent) time (within 10 years) - 10 years	HRS § 291E-41	Civil

State	Refusal Admitted As Evidence?	Statute / Justification	Penalty for Refusal?	Statute	Civil or Criminal?
Idaho	Yes	*State v. Curtis*, 680 P.2d 1383 (Idaho App. 1984)	Fine of $250; license suspension - 1st time, 1 year; 2nd time (within 10 years), 2 years	Idaho Code § 18-8002(4)(c)'	Civil
Illinois	Yes	625 ILCS 5/11-501.2	License suspension - 1st time, 1 year; 2nd (or additional) time (within 5 years), 3 years	625 ILCS 5/6-206	Civil
Indiana	Yes	Burns Ind. Code Ann. § 9-30-6-3	Is an infraction; fine of $500 or up to $10,000 for repeat offenders; license suspension - 1st time, 1 year; Subsequent time, 2 years	Burns Ind. Code Ann. § 9-30-7-5; § 34-28-5-4	Civil & Criminal
Iowa	Yes	Iowa Code § 321J.16	License revocation - 1st time, 1 year; Subsequent time, 2 years	Iowa Code § 321J.9	Civil
Kansas	Yes	K.S.A. § 8-1001	Infraction - fine of $105	K.S.A. § 8-2118	Criminal
Kentucky	Yes	KRS § 189A.105	License suspension - 1st time, 30-120 days; 2nd time (within 5 years) - 12-18 months; 3rd time - 2-3 years; 4th (or subsequent) time - 5 years	KRS § 189A.107	Civil
Louisiana	Yes	La. R.S. 32:666	1st time - license revocation, 1 year; 2nd time (within 5 years) - 2 years; subsequent time - fine between $300 & $1,000 & imprisonment between 10 days & 6 months	La. R.S. 32:667; La. R.S. 14:98.2	Civil & Criminal
Maine	Yes	29-A M.R.S. § 2521	License suspension - 1st time, 275 days; 2nd time - 18 months; 3rd time - 4 years; 4th time - 6 years // Punishment enhancements if offender is convicted of OWI	29-A M.R.S. § 2521, § 2411	Civil

State	Refusal Admitted As Evidence?	Statute / Justification	Penalty for Refusal?	Statute	Civil or Criminal?
Maryland	Yes	Md. COURTS AND JUDICIAL PROCEEDINGS Code Ann. § 10-309(a)(2); *Krauss v. State*, 587 A.2d 1102 (Md. 1991)	License suspension - 1st time, 120 days; Subsequent time - 1 year	Md. TRANSPORTATION Code Ann. § 16-205.1	Civil
Massachusetts	No	ALM GL ch. 90, § 24	License suspension - 1st time, 180 days; 2nd time - 3 years; 3rd time - 5 years; 4th time - lifetime suspension	ALM GL ch. 90, § 2	Civil
Michigan	Yes	MCLS § 257.625a	Civil infraction; license suspension - 1st time, 1 year; Subsequent time (within 7 years) - 2 years	MCLS § 257.625a(2)	Civil
Minnesota	Yes	Minn. Stat. § 169A.45	License revocation - 1st time, 90 days; subsequent times depend on if the violations occurred in the last 10 years or not; severity increases with frequency	Minn. Stat. § 169A.52	Civil
Mississippi	Yes	Miss. Code Ann. § 63-11-41	Fine and/or jail time; license suspension increasing per repeat	Miss. Code Ann. § 63-11-31	Civil & Criminal
Missouri	Yes	§ 577.041 R.S.Mo.	License revocation - 1 year	§ 577.041 R.S.Mo.	Civil
Montana	Yes	61-8-404, MCA	For preliminary alcohol-screening test, license suspension of 1 year // For implied-consent chemical test, license suspension - 1st time, 6 months; subsequent offense (within 5 years) - 1 year	61-8-409, MCA; 61-8-402, MCA	Civil
Nebraska	Yes	R.R.S. Neb. § 60-6,197	License revocation - 1 year; additional penalties if convicted	R.R.S. Neb. § 60-498.02; § 60-6,197(3)	Civil
Nevada	Yes	Nev. Rev. Stat. Ann. § 484C.240	Officer may seize person's license and arrest for purposes of a test	Nev. Rev. Stat. Ann. § 484C.150; § 484C.160	Civil

State	Refusal Admitted As Evidence?	Statute / Justification	Penalty for Refusal?	Statute	Civil or Criminal?
New Hampshire	Yes	NH RSA 265-A:10	License suspension - 1st time, 6 months; 2nd (or additional) time - 2 years	NH RSA 265-A:14	Civil
New Jersey	Yes	*State v. Stever*, 527 A.2d 408 (N.J. 1987)	License suspension - 1st time, 7 months - 1 year; 2nd time - 2 years; subsequent time - 10 years // Also fined and required to install an ignition interlock; penalties increase in a school zone	N.J. Stat. § 39:4-50.4a	Civil
New Mexico	No	*State v. Chavez*, 96 N.M. 313, 629 P.2d 1242 (Ct. App. 1981)	License suspension - 1 year	N.M. Stat. Ann. § 66-8-111	Civil
New York	Yes	NY CLS Veh & Tr § 1194	License suspension - 1st time, 1 year; 2nd time (within 5 years) - 18 months // Also fine of $500 or $750 on repeat	NY CLS Veh & Tr § 1194	Civil
North Carolina	Yes	N.C. Gen. Stat. § 20-16.2	License suspension - 1 year	N.C. Gen. Stat. § 20-16.2	Civil
North Dakota	Yes	N.D. Cent. Code, § 39-20-08	License suspension - 1st time, 6 months; 2nd time (within 7 years) - 2 years; 3rd (or subsequent) time - 3 years	N.D. Cent. Code, § 39-20-04	Civil
Ohio	Yes	*Westerville v. Cunningham*, 239 N.E.2d 40 (Ohio 1968)	License suspension - 1st time, 1 year; 2nd time (within 6 years) - 2 years; 3rd time - 3 years; subsequent refusal - 5 years // Possible fine, too? (Have evidence that it could be a misdemeanor, too; statutory language is somewhat circuitous)	ORC Ann. 4511.191, 4511.192	Civil

State	Refusal Admitted As Evidence?	Statute / Justification	Penalty for Refusal?	Statute	Civil or Criminal?
Oklahoma	Yes	47 Okl. St. § 756	License suspension - 1st time, 180 days; 2nd time - 1 year; Subsequent refusal - 3 years	47 Okl. St. § 6-205.1	Civil
Oregon	Yes	ORS § 813.310 / 813.136	Fine of $650; license suspension - 1st time, 1 year; subsequent refusal - 3 years	ORS § 813.095 / 813.420	Civil & Criminal
Pennsylvania	Yes	75 Pa.C.S. § 1547	License suspension - 1st time, 1 year; subsequent refusal - 18 months // (Additional criminal penalties for someone who violates the impairment statute)	75 Pa.C.S. § 1547	Civil
Rhode Island	Only if defendant testifies	R.I. Gen. Laws § 31-27-2	Fine of $500; license suspension, fine, and community service that go up with each offense; any repeat offense within 5 years is a misdemeanor	R.I. Gen. Laws § 31-27-2.1	Civil & Criminal
South Carolina	Yes	*State v. Miller*, 185 S.E.2d 359 (S.C. 1971)	License suspension - 1st time, 6 months; 2nd time (within 10 years) - 9 months; 3rd time - 1 year; Subsequent refusal - 15 months	S.C. Code Ann. § 56-5-2951	Civil
South Dakota	Yes	S.D. Codified Laws § 19-13-28.1	License revocation - 1 year	S.D. Codified Laws § 32-23-11	Civil
Tennessee	Yes	Tenn. Code Ann. § 55-10-406	License revocation - 1st time, 1 year; Subsequent time - 2 years	Tenn. Code Ann. § 55-10-407	Civil
Texas	Yes	Tex. Transp. Code § 724.06	License revocation - 1st time, 180 days; Subsequent time - 2 years	Tex. Transp. Code § 724.035	Civil

State	Refusal Admitted As Evidence?	Statute / Justification	Penalty for Refusal?	Statute	Civil or Criminal?
Utah	Yes	Utah Code Ann. § 41-6a-524	License revocation - 1st time, 18 months; Subsequent time - 3 years	Utah Code Ann. § 41-6a-521	Civil
Vermont	Yes	23 V.S.A. § 1202	License revocation - 1st time - 6 months; 2nd time - 18 months; Subsequent refusal - Lifetime suspension (reinstatement allowable subject to other conditions, such as the installation of an ignition interlock)	23 V.S.A. § 1205	Civil
Virginia	Yes	Va. Code Ann. § 18.2-268.10	License revocation - 1st time - 1 year; 2nd and subsequent time (within 10 years) - 3 years // Repeat refusals constitute a criminal offense	Va. Code Ann. § 18.2-268.3	Civil & Criminal
Washington	Yes	Rev. Code Wash. (ARCW) § 46.61.517	License revocation - 1st time - 1 year; Subsequent refusal - 2 years	Rev. Code Wash. (ARCW) § 46.20.3101	Civil
West Virginia	Yes	*State v. Cozart,* 352 S.E.2d 152 (W.Va. 1986)	License revocation - 1st time - 1 year (or 45 days + 1 year with ignition interlock); 2nd time - 10 years + 1 year ignition interlock; 3rd time - Life	W. Va. Code § 17C-5-7	Civil
Wisconsin	Yes	*State v. Albright,* 298 N.W.2d 196 (Wis. App. 1980)	License revocation - 1st time - 1 year; 2nd time (within 10 years) - 2 years; Subsequent time - 3 years	Wis. Stat. § 343.305	Civil
Wyoming	No	(laws repealed in 2011)	(none)	(none)	n/a

Child-Endangerment Statutes

Forty-four states plus the District of Columbia have statutes that provide for additional punishment for intoxicated drivers who, while driving under the influence, are transporting children. These states have generally taken three different statutory approaches to punishing offenders: 1) imposing a mandatory minimum sentence, 2) enhancing punishments for the underlying impaired-driving offenses, or 3) creating a new and separate offense for which the offenders can be charged. Twelve states also have specific statutory provisions that increase the punishment for repeat offenders of the child-endangerment statute. Other remedies for child endangerment include installing an ignition interlock in the offender's car and considering child endangerment as an aggravating circumstance when sentencing for the base impaired-driving conviction. States also differ greatly on the age requirement for the passenger: the least restrictive law punishes those who are transporting children under the age of twelve, while the most restrictive imposes an upper age limit of twenty-one.

Ten states plus the District of Columbia have imposed mandatory minimum sentences on impaired drivers who are carrying child passengers: Arkansas, Florida, Illinois, Kentucky, Maryland, New Hampshire, Pennsylvania, West Virginia, Wisconsin, and Wyoming. These mandatory minimum sentences usually take the form of either a fine or a term of imprisonment, and sometimes both are imposed. Most of the states that impose mandatory minimum sentences also include provisions in the statute increasing the severity of the punishment for repeat offenses.

The most popular option on how to deal with child endangerment by impaired drivers is to enhance already-existing punishments. Seventeen states do this: Alabama, California, Delaware, Hawaii, Kansas, Maine, Massachusetts, Montana, New Jersey, Oklahoma, Oregon, Rhode Island, South Carolina, Tennessee, Virginia, Washington, and Wisconsin. Most states add an additional fine or period of imprisonment to the end of the offender's sentence, if not both. The degree of the increase varies greatly from state to state. Some states (Alabama and Wisconsin) double the minimum punishment for the base offense, while others just add forty-eight hours to the term of imprisonment. Other states choose to impose community service, suspend the offender's license, or revoke the offender's license for an additional term.

Fifteen states consider this form of child-endangerment to be a separate crime from any other offense the driver may have committed: Alaska, Arizona, Georgia, Idaho, Illinois (only upon repeat), Indiana, Mississippi, Missouri, Nebraska, New Jersey, New York, North Dakota, Ohio, Texas, and Utah. Five of these states — Alaska, Arizona, Indiana, New York, and Texas — treat vehicular child-endangerment as a felony. The rest of the states treat the crime as a misdemeanor, but many states place child endangerment in the most serious class of misdemeanors they have established. Most states label the crime specifically as child endangerment, but in New Jersey, the charge is a disorderly persons offense, and in Arizona, child endangerment is an aggravated driving offense. Oklahoma also treats child endangerment as a separate felonious offense if the person driving the car while under the influence is the parent or guardian of a child or has custody of the child passenger.

Other states have figured out alternative treatments of child endangerment. In addition to the other punishments imposed, Florida and Wisconsin both require the offender to have an ignition interlock device installed in his or her car for at least six months post-conviction. Three states — Minnesota, Nevada, and North Carolina — allow the judge to consider child endangerment as an aggravating circumstance in sentencing offenders. The District of Columbia doubles the incarceration period (per child) if the passengers are not wearing age-appropriate safety equipment. Louisiana's statute simply prevents the suspension of any part of the base impaired-driving conviction. New Hampshire mandates that drivers undergo screening for substance abuse, which could potentially lead to further evaluation or counseling. Six states (Colorado, Connecticut, Iowa, New Mexico, South Dakota, and Vermont) do not have statutes specifically treating driving while intoxicated with children in the car, although other general child-endangerment statutes may be triggered if a child is injured or killed.

States also vary on the maximum age for the passenger in order for the law to take effect. Kentucky has the lowest maximum age in the country, requiring the passenger to be under twelve years of age. Maine has the highest maximum age in the country, punishing intoxicated drivers with any passengers under the age of twenty-one. The most common provision is that the passenger must be under the age of eighteen (found in sixteen states), but the average age (both mean and median) limit for passengers is sixteen.

Additional Punishment of Child Endangerment (by State)

Treatment	List of States
Mandatory Minimum Sentence	(10 states + DC) Arkansas, District of Columbia (doubled if underage passengers are not in appropriate restraints), Florida, Illinois, Kentucky, Maryland, New Hampshire, Pennsylvania, West Virginia, Wisconsin, Wyoming
Separate Offense	(15 states) Alaska (felony), Arizona (aggravated driving; felony), Georgia, Idaho, Illinois* (upon repeat), Indiana (felony), Mississippi, Missouri, Nebraska, New Jersey (disorderly persons offense), New York (felony), North Dakota (repeat offense is a felony), Ohio, Texas (felony), Utah
Sentence Enhancement	(17 states) Alabama, California, Delaware, Hawaii, Kansas, Maine, Massachusetts, Montana, New Jersey, Oklahoma* (if parent/guardian/custodian, also guilty of separate felony), Oregon, Rhode Island, South Carolina, Tennessee, Virginia, Washington, Wisconsin
Ignition Interlock	(2 states) Florida, Washington
Aggravating Factor in Sentencing	(3 states) Minnesota, Nevada, North Carolina
Other	Louisiana (prevents suspension of sentence), New Hampshire (license revoked until screening is completed/ potential counseling)
None	(6 states) Colorado, Connecticut, Iowa, New Mexico, South Dakota, Vermont
Punishment Increases with Repetition	(12 states) Arkansas, Florida, Illinois, Kentucky, Maryland, Massachusetts, Michigan, Montana, North Dakota, Pennsylvania, Washington, Wyoming

"Vulnerable-User" Statutes

Many states have specific statutes that impose increased penalties for motor-vehicle accidents involving injury to pedestrians or cyclists. The last several years, however, have seen over a dozen states enact or at least debate the creation of "vulnerable-user" statutes that would elevate the criminal penalties for accidents involving such users. Interestingly, the definition of "vulnerable user" and what crimes are enhanced varies widely depending on the state.

Who Is a "Vulnerable User"?

- Pedestrians: Hawaii specifies the pedestrian must be "legally within a street or public highway." Additionally, Delaware, Utah, and Vermont define "pedestrian" to include highway workers and emergency-services workers either "upon a highway" or "within the right-of-way."
- Highway workers/emergency services: states that do not include highway workers and emergency services as part of the definition of pedestrian include them in a separate category.
- Bicycles: Delaware, Hawaii, Oregon, Vermont, Utah, and Washington include cyclists; in addition, Utah and Washington specifically include both motor-driven and electric-assisted bicycles.
- Person riding an animal: Hawaii does not include animal riders, while Vermont includes those "riding, driving, or herding an animal."
- Agricultural/Husbandry/Farm equipment: These include farm tractors in particular (Delaware, Utah, Oregon, and Washington). Utah and Washington specify the equipment must have an enclosed-shell; Oregon had an enclosed-shell requirement when it enacted its law in 2007 but removed it in 2009. Hawaii does not have a farm-equipment provision.
- Nonmotorized means of transportation (in general): Vermont.
- Skateboards: Delaware, Oregon, and Utah.
- Roller skates: Delaware, Oregon, Utah, and Vermont.
- In-line skates/Rollerblades: Delaware, Oregon, Utah, and Vermont.
- Scooters: Delaware, Utah (motorized), Oregon, Vermont, and Washington (motorized).
- Mopeds: Delaware, Hawaii, Utah, and Washington.
- Motorcycles: Delaware, Utah, and Washington.
- Wheelchairs: Hawaii and Utah.
- Personal-mobility devices: Hawaii (manual and electric), Utah (electric), Vermont (manual or electric), and Washington (electric).
- Roller skis: Vermont.

What Is Covered?

Enhanced or special penalties for crimes involving a vulnerable user also vary from state to state.

Delaware, 21 Del. C. § 4176 (careless or inattentive driving): Careless or inattentive driving where serious physical injury occurred. Defendant must make a first appearance by personally appearing in court at the time indicated in the summons. On conviction, court must impose a sentence that includes both completion of a traffic-safety course and up to 100 hours of community service in activities related to driver improvement and public education on traffic safety. Failure to complete the two requirements results in enhanced penalty (fine of up to $550 and suspension of driving privileges per existing statute).

Hawaii, HRS § 707-702.5 (negligent homicide in the first degree): A person commits the offense of negligent homicide in the first degree if that person causes the death of a vulnerable user by the operation of a vehicle in a negligent manner. Crime is a class B felony. HRS § 707-703 (negligent homicide in the second degree): A person commits the offense of negligent homicide in the second degree if that person causes the death of a vulnerable user by the operation of a vehicle in a manner that constitutes simple negligence as defined in section 707-704(2). Crime is a class C felony. HRS § 707-705 (negligent injury

in the first degree): A person commits the offense of negligent injury in the first degree if that person causes substantial bodily injury to a vulnerable user by the operation of a motor vehicle in a negligent manner. Crime is a class C felony.

Oregon, ORS § 811.135(3) (careless driving where serious physical injury or death of vulnerable user occurred): Defendant must make a first appearance by personally appearing in court at the time indicated in the summons (ORS § 153.061). On conviction, court must impose a sentence that includes both completion of a traffic-safety course and 100-200 hours of community service that includes activities related to driver improvement and public education on traffic safety. Failure to complete the two requirements results in an enhanced penalty (fine of up to $12,500 and suspension of driving privileges for one year).

Utah: Utah Code Ann. § 41-6a-706.5 (operation of motor vehicle near a vulnerable user of a highway prohibited — endangering a vulnerable user of a highway prohibited): Must not operate a motor vehicle within three feet of a vulnerable user of a highway; distract or attempt to distract a vulnerable user of a highway for the purpose of causing violence or injury to the vulnerable user of a highway; or force or attempt to force a vulnerable user of a highway off of the roadway for a purpose unrelated to public safety. Violation is class C misdemeanor, or class B misdemeanor if bodily injury occurred.

Vermont, 23 V.S.A. § 1033(b) (passing motor vehicles and vulnerable users): "The operator of a motor vehicle approaching or passing a vulnerable user . . . shall exercise due care, which includes increasing clearance, to pass the vulnerable user safely, and shall cross the center of the highway only as provided in subdivision (a)(1) of this section." 23 V.S.A. § 1039, (following too closely, crowding, and harassment): "The operator of a vehicle shall not, in a careless or imprudent manner, approach, pass, or maintain speed unnecessarily close to a vulnerable user as defined in subdivision 4(81) of this title, and an occupant of a vehicle shall not throw any object or substance at a vulnerable user."

Washington, Rev. Code Wash. § 46.61.526, (negligent driving — second degree — vulnerable-user victim): A person commits negligent driving in the second degree with a vulnerable-user victim if, under circumstances not constituting negligent driving in the first degree, he or she operates a vehicle, as defined in RCW 46.04.670, in a manner that is both negligent and endangers or is likely to endanger any person or property, and he or she proximately causes the death, great bodily harm, or substantial bodily harm of a vulnerable user of a public way. Case cannot be deferred (§ 46.63.070(5)(d)). On conviction, court may impose a sentence that includes both a penalty of $1000-$5000 and suspension of driving privileges for ninety days. In the alternative, person may pay penalty of $250, attend traffic school, and perform up to 100 hours of community service in activities related to driver improvement and public education on traffic safety.

Habitual-Offender Laws

Many states classify drivers who repeatedly offend driving laws as habitual offenders and impose penalties for such chronic dangerous behavior. Twenty-six states implement such laws, which are separate from standard three-strike laws or enhancements for repeat convictions of the same offense. Most of these laws specify a threshold number (typically three) of "serious" traffic offenses, after which an offending driver is considered a habitual offender. These serious offenses usually include reckless driving, vehicular manslaughter or homicide, and driving under the influence. A small number of states turn to their points system to regulate the number of offenses one must commit before becoming a habitual offender.

Most states require three high-level traffic offenses for someone to be called a habitual offender. Some states (Indiana and Michigan) require fewer offenses, while some states (Louisiana, Maryland, Wisconsin, and Vermont) require more. Alternatively, Montana uses a points system to designate the number of points one must receive to be designated a habitual offender (though it still works out to be three normal impaired-driving convictions). Vermont uses its points system merely to designate the offenses that are serious enough to count toward habitual-offender status.

Once someone becomes a habitual offender, states generally suspend the driver's license. These suspensions mostly last somewhere between one and five years, though certain states provide for longer suspensions. Seven states (Florida, Georgia, Maine, Oregon, South Carolina, Washington, and Wisconsin) allow drivers to petition for reinstatement after completing part of their suspension. Maine provides for an indefinite suspension of the license, though drivers may reapply for reinstatement after three years. Maryland mandates that habitual offenders have an interlock installed for two years on their car after serving a two-year suspension. Only North Carolina's code states that the license of a habitual offender (defined as someone convicted of impaired driving three times in ten years) will be permanently revoked.

These habitual offender laws also have other minor functions. Some impose habitual-offender status for more (10-15) violations of less serious traffic/moving violations. Others provide for more consequences as a result of habitual-offender status, such as fines, driver-improvement courses, or even small terms of imprisonment. All habitual-offender laws, however, provide increased punishments for continuing to operate motor vehicles once the driver has achieved habitual status.

Habitual-Offender Laws (by State)

State	Habitual-Offender Law?	Citation	License Suspension/ Other Punishment	Citation
Alabama	No			
Alaska	No			
Arizona	No			
Arkansas	No			
California	Yes	Cal Pen Code § 193.7	1 year	Cal Veh Code § 13350
Colorado	Yes	C.R.S. 42-2-202	5 years	C.R.S. 42-2-205
Connecticut	No			
Delaware	Yes	21 Del. C. § 2802	5 years if for serious offenses, 3 years if for moving violations; additional fine ($115-$1,150) and impris-onment (30 days-12 months)	21 Del. C. § 2809, 2814
District of Columbia	No			

State	Habitual-Offender Law?	Citation	License Suspension/ Other Punishment	Citation
Florida	Yes	Fla. Stat. § 322.264	5 years (may apply for reinstatement after 12 months; must complete driver-improvement course)	Fla. Stat. § 322.27, 322.271, 322.291
Georgia	Yes	O.C.G.A. § 40-5-58	5 years (may apply for probationary license after 2 years)	O.C.G.A. § 40-5-62, 40-5-58
Hawaii	Yes	HRS § 291E-61.5	Class C felony; 5 years' probation with short term of imprisonment, fines, and referral to counselor	HRS § 291E-61.5
Idaho	No			
Illinois	No			
Indiana	Yes	Burns Ind. Code Ann. § 9-30-10-4	5-10 years	Burns Ind. Code Ann. § 9-30-10-5
Iowa	Yes	Iowa Code § 321.555	2-6 years for serious offenses; 1 year for minor offenses	Iowa Code § 321.560
Kansas	Yes	K.S.A. § 8-285	3 years	K.S.A. § 8-286
Kentucky	No			
Louisiana	Yes	La. R.S. 32:1472	3 years	La. R.S. 32:1479
Maine	Yes	29-A M.R.S. § 2551-A	Indefinite; can petition for reinstatement after 3 years	29-A M.R.S. § 2552, 2554
Maryland	Yes	Md. TRANSPORTATION Code Ann. § 16-404	24 months; must have interlock for 24 additional months	Md. TRANSPORTATION Code Ann. § 16-404, 16-404.1
Massachusetts	Yes	ALM GL ch. 90, § 22F	4 years	ALM GL ch. 90, § 22F
Michigan	Yes	MCLS § 257.303	1-5 years	MCLS § 257.303
Minnesota	No			
Mississippi	No			
Missouri	No			
Montana	Yes	61-11-203, MCA	3 years	61-11-211, MCA
Nebraska	No			
Nevada	No			
New Hampshire	Yes	NH RSA 259:39	1-4 years	NH RSA 262:19
New Jersey	Yes	N.J. Stat. § 39:5-30a	3 years	N.J. Stat. § 39:5-30b
New Mexico	No			
New York	No			
North Carolina	Yes	N.C. Gen. Stat. § 20-138.5	Permanent revocation; Class F felony, 12 months' imprisonment	N.C. Gen. Stat. § 20-138.5
North Dakota	No			

State	Habitual-Offender Law?	Citation	License Suspension/ Other Punishment	Citation
Ohio	No			
Oklahoma	No			
Oregon	Yes	ORS § 809.600	5 years (may apply for reinstatement after 12 months)	ORS § 809.650, 807.270
Pennsylvania	Yes	75 Pa.C.S. § 1542	5 years	75 Pa.C.S. § 1542
Rhode Island	Yes	R.I. Gen. Laws § 31-40-2	1-5 years	R.I. Gen. Laws § 31-40-7
South Carolina	Yes	S.C. Code Ann. § 56-1-1020	5 years (may petition for reinstatement after 2 years)	S.C. Code Ann. § 56-1-1090
South Dakota	No			
Tennessee	Yes	Tenn. Code Ann. § 55-10-603		
Texas	No			
Utah	No			
Vermont	Yes	23 V.S.A. § 673a	2 years	23 V.S.A. § 673a
Virginia**	No			
Washington	Yes	Rev. Code Wash. (ARCW) § 46.65.020	7 years (may petition for reinstatement after 4 years)	Rev. Code Wash. (ARCW) § 46.65.060, 46.65.060, 46.65.070, 46.65.080
West Virginia	No			
Wisconsin	Yes	Wis. Stat. § 351.02	5 years (may petition for occupational license after 2 years)	Wis. Stat. § 351.025, 351.07
Wyoming	No			

National Center for State Courts
300 Newport Avenue
Williamsburg, VA 23185
www.ncsc.org