

2007 DUI MODEL LAW

This model replaces the DUI Millennium Prevention Act developed in 2000 by NCUTLO. The 2007 model law incorporates changes designed to be consistent with the provisions of SAFETEA-LU and to reflect current priorities, including provisions relating to repeat and high blood alcohol concentration (BAC) offenders and use of ignition interlocks. The model has been reviewed by NHTSA counsel office to insure compliance with SAFETEA-LU.

Section 100. This act shall be known as the 2007 Impaired Driving Prevention Act.

Section 101. Definitions.

(a) "Alcohol" means any substance or substances containing any form of alcohol.

(b) "Alcoholic beverage" means:

(1) Beer, ale, porter, stout and other similar fermented beverages, including sake and similar products, of any name or description containing one-half of one percent or more alcohol by volume, brewed or produced from malt wholly or in part, or from any substitute thereof.

(2) Any beverage obtained by the fermentation of the natural content of fruits or other agricultural products containing sugar, of not less than one-half of one percent of alcohol by volume.

(3) Any distilled spirits commonly referred to as ethyl alcohol, ethanol or spirits of wine in any form, including all dilutions and mixtures thereof from whatever process produced.

(c) "Alcohol concentration" shall mean either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

(d) "Any measurable amount of alcohol" means any alcohol concentration in a person's blood or breath that is 0.02 or more.

(e) "Chemical test" means a test which analyzes an individual's breath, blood, urine, saliva and/or other bodily fluids or tissues for evidence of drug or alcohol use.

(f) "Chemical test refusal" is a refusal to take, or failure to cooperate with or complete the chemical test.

(g) "Drive" or "driving" means to operate or be in physical control of a vehicle.

(h) "Drug" means a controlled substance as defined by State or federal law or any other drug or psychoactive substance capable of impairing a person's physical or mental faculties or any combination of these substances.

(i) "Imprisonment" means confinement in a jail, minimum-security facility, community corrections facility, house arrest with electronic monitoring, inpatient rehabilitation or treatment center, or other facility, provided the individual under confinement is in fact being detained.

(j) "License or license to operate a motor vehicle" means any driver's license or any other license or permit to operate a motor vehicle issued under, or

granted by, the laws of this State including:

(1) Any temporary license or instruction permit;

(2) The privilege of any person to drive a motor vehicle whether or not such person holds a valid license; or

(3) Any nonresident's operating privilege as defined herein.

(k) "Open alcoholic beverage container" means any bottle, can or other receptacle that contains any amount of alcoholic beverage, and that is open, has a broken seal, or the contents of which are partially removed.

(l) "Passenger area" means the area designed to seat the driver and passengers while the motor vehicle is in operation and any area that is readily accessible to the driver or passengers while in their seating positions, including but not limited to the glove compartment.

(m) "Physical control" of a vehicle means a person with the capability of operating a vehicle, regardless of whether the vehicle is actually operating at the time.

(n) "Preliminary alcohol test" means a test with an instrument designed and used to measure the amount of alcohol in a person based on a breath sample.

(o) "Vehicle" means any device in, upon or by which any person or property is or may be transported or drawn upon a highway, excepting devices used exclusively upon stationary rails or tracks.

Section 102. Driving under the influence of alcohol or drugs; Aggravated driving under the influence of alcohol; Chemical test -- criminal violation for refusal.

(a) Any person operating a vehicle in this state has given implied consent to a mandatory chemical test if a police officer has probable cause to believe that the person is an impaired driver. If requested to take a chemical test by an officer with such probable cause, the driver is required to take the test. Refusal of a chemical test is a criminal offense.

(b) Driving under the influence of alcohol or drugs - A person shall not drive any vehicle while:

1. the alcohol concentration in such person's blood or breath is 0.08 or more;

2. the alcohol concentration in such person's blood or breath as measured within (two) hours of the time of driving is 0.08 or more;

3. under the influence of alcohol;

4. under the influence of any substance, any drug or any controlled substances or any combination of these; or,

5. under the combined influence of alcohol and any substance, any drug or any controlled substance.

(c) A person convicted of violating subsection (a) or (b) shall be punished as follows:

(1)(A) For a first offense, a person shall be sentenced to imprisonment for not less than (48 hours) or to pay a fine of not less than (\$125) or to both such imprisonment and fine; and

(B) The department shall:

(i) suspend the person's license for not less than (90) days; or

(ii) suspend the person's license for not less than (15) days followed by a reinstatement of limited driving privileges for the remainder of a (90) day period for the purposes of getting to and from work, school, an alcohol treatment program, or an interlock service facility, if a certified ignition interlock device is installed on each vehicle owned or operated, or both, by the person.

(2)(A) For a second offense within (five) years, a person shall be sentenced to imprisonment for not less than (5) days and shall pay a fine of not less than (\$250); and

(B) The department shall:

(i) suspend the person's license for not less than (one year); or

(ii) suspend the person's license for not less than (45) days followed by a reinstatement of limited driving privileges for the remainder of a (one year) period for the purposes of getting to and from work, school, an alcohol treatment program, or an interlock service facility, if a certified ignition interlock device is installed on each vehicle owned or operated, or both, by the person. 1

(3)(A) For a third offense within (five) years, a person shall be sentenced to imprisonment for not less than (10) days and shall pay a fine of not less than (\$500); and

(B) The department shall:

(i) suspend the person's license for not less than (two years); or

(ii) suspend the person's license for not less than (90) days followed by a reinstatement of limited driving privileges for the remainder of a (two year) period for the purposes of getting to and from work, school, an alcohol treatment program, or an interlock service facility, if a certified ignition interlock device is installed on each vehicle owned or operated, or both, by the person.

(4)(A) For a fourth or subsequent offense within (five) years, a person shall be sentenced to imprisonment for not less than (30) days and shall pay a fine of not less than (\$1,000); and

(B) The department shall suspend the person's license for not less than (five years).

(d) Aggravated driving under the influence of alcohol. A person shall not drive any vehicle while:

1. the alcohol concentration in such person's blood or breath is (0.15) or more; or,

2. the alcohol concentration in such person's blood or breath as measured within (two) hours of the time of driving is (0.15) or more.

(e) A person convicted of violating subsection (d) shall be punished as follows:

(1)(A) For a first offense, a person shall be sentenced to imprisonment for not less than (5) days and shall pay a fine of not less than (\$250); and

(B) The department shall:

(i) suspend the person's license for not less than (one year); or

(ii) suspend the person's license for not less than (45) days

followed by a reinstatement of limited driving privileges for the remainder of a (one year) period for the purposes of getting to and from work, school, an alcohol treatment program, or an interlock service facility, if a certified ignition interlock device is installed on each vehicle owned or operated, or both, by the person. 2

(2)(A) For a second offense within (five) years, a person shall be sentenced to imprisonment for not less than (10) days and shall pay a fine of not less than (\$500); and

(B) The department shall:

(i) suspend the person's license for not less than (two year); or.

(ii) suspend the person's license for not less than (90) days followed by a reinstatement of limited driving privileges for the remainder of a (two year) period for the purposes of getting to and from work, school, an alcohol treatment program, or an interlock service facility, if a certified ignition interlock device is installed on each vehicle owned or operated, or both, by the person. 3

(3)(A) For a third offense within (five) years, a person shall be sentenced to imprisonment for not less than (30) days and shall pay a fine of not less than (\$1,000); and

(B) The department shall:

(i) suspend the person's license for not less than (five years); or

(ii) suspend the person's license for not less than (180) days followed by a reinstatement of limited driving privileges for the remainder of a (five year) period for the purposes of getting to and from work, school, an alcohol treatment program, or an interlock service facility, if a certified ignition interlock device is installed on each vehicle owned or operated, or both, by the person.

(4)(A) For a fourth or subsequent offense within (five) years, a person shall be sentenced to imprisonment for not less than (60) days and shall pay a fine of not less than (\$2,500); and

(B) The department shall suspend the person's license for not less than (ten years).

(f) Alcohol and Drug Abuse Evaluation and Treatment.

(1) Before sentencing any person convicted of violating either subsections (a), (b) or (d), the court shall conduct or order an appropriate examination or examinations to determine whether the person needs or would benefit from treatment for alcohol or other drug abuse.

(2) In addition to the penalties imposed under subsections (c) and (e) and after receiving the results of the examination in subparagraph (1) of this subsection, or upon a hearing and determination that the person is an habitual user of alcohol or other drugs, the court may order supervised treatment on an outpatient basis, or upon additional determinations that the person constitutes a danger to self or others and that adequate treatment facilities are available, the court may order such person committed for treatment at a facility or institution approved by the (state department of health).

(3) Any person subject to this subsection may be examined by a physician of such person's own choosing. The court shall consider the results of any such examination.

(4) Upon application for a driver's license by any person under an order of commitment or supervised treatment pursuant to subparagraph (2) of this subsection, the results of the examination referred to in subparagraph (1) of this subsection and a report of the progress of the treatment ordered shall be forwarded by the applicant to the department for consideration by the (health advisory board).

(5) The department may after receiving the advice of the (health advisory board) issue a license to such person with conditions and restrictions that are consistent with the progress of the person's rehabilitation and the protection of the public.

(f) Subject to subsections (c) and (e), a court may order a person convicted of a violation of either subsections (a), (b) or (d), who has had his or her license restored, to install a certified ignition interlock on each vehicle owned or operated, or both, by the person.

(g) The fact that any person charged with violating either subsections (a), (b) or (d) is or has been legally entitled to use alcohol or any drug shall not constitute a defense against any charge of violating this section.

(h) A sentencing judge may permit any jail sentence or any portion of a jail sentence imposed for violating either subsections (a), (b) or (d) and punished under either subsections (c) or (e) to be served under a home detention program.

(i) A person convicted of violating either subsections (a), (b) or (d) may be ordered by the court to perform community service, to pay restitution to any victims, and to pay the costs associated with imprisonment, a home detention program, an alcohol-drug abuse evaluation or a treatment program.

Section 103. Chemical test.

(a) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person driving under the influence of alcohol or drugs, evidence of the concentration of alcohol or drugs in a person at the time alleged, as determined by analysis of the person's blood, urine, breath or other bodily substance, shall be admissible by any party to such action or proceeding. Where such a test is made the following provisions shall apply:

1. Chemical analyses of the person's blood, urine, breath, or other bodily substance to be considered valid under the provisions of this section shall have been performed substantially according to methods approved by the (state department of health) and by an individual possessing a valid permit issued by the (state department of health) for this purpose. The (state department of health) is authorized to approve satisfactory techniques or methods, to ascertain the qualifications and competence of individuals to conduct such analyses, and to issue permits that shall be subject to termination or revocation at the discretion of the (state department of health).

2. When a person submits to a blood test at the request of a law enforcement officer, only a qualified person may withdraw blood for the purpose of determining the alcoholic or drug content therein. This limitation shall not apply to the taking of breath specimens.

3. Upon the request of the person who submitted to a chemical test or tests at the request of a law enforcement officer, the results of such test or tests shall be made available to the person or such person's attorney.

(b) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by a person driving under the influence of alcohol, if the concentration of alcohol in the person's blood or breath at the time alleged as shown by analysis of the person's blood or breath was less than 0.08, such fact shall not give rise to any presumption that the person was not under the influence of alcohol, but may be considered with other competent evidence in determining that issue. This provision shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether the person was under the influence of drugs.

(c) If a person under arrest refuses to submit to a chemical test under the provisions of 104, evidence of such refusal shall be admissible by any party in any civil or criminal action or proceeding arising out of acts alleged to have been committed while the person was driving under the influence of alcohol or drugs.

Section 104. Implied consent and administrative license suspension; duties of the officer and opportunity for a hearing.

(a) Any person who drives a vehicle upon the highways of this State shall be deemed to have given consent to a chemical test or tests of such operator's blood or breath, for the purpose of determining operator's alcohol concentration, and to a chemical test or tests of such operator's blood, urine, or other bodily substances for purpose of detecting the presence of alcohol or drugs.

(b) The test or tests shall be administered at the direction of a law enforcement officer who has probable cause to believe that the person has operated a vehicle under the influence of alcohol and/or drugs or other controlled substances, or in the case of a person under the age of 21 years, that such person has operated a vehicle while having any measurable amount of alcohol in his or her system.

(c) Any person who is dead, unconscious or who is otherwise in a condition rendering one incapable of refusal, shall be deemed not to have withdrawn the consent provided by paragraph (a) of this section and the chemical test or tests may be administered, subject to the provisions of section 103.

(d) A person requested to submit to a chemical test shall be advised by the law enforcement officer requesting the test that a refusal to submit to or the failure to complete the test is a violation of law that will result in the immediate arrest and the suspension of such person's license to operate a motor vehicle. A law enforcement officer's failure to advise the person in accordance

with this section does not affect the admissibility of test refusals or failures in any subsequent administrative hearing or criminal case.

(e) If the person refuses testing or fails to complete it, or submits to a test required under subsection (a) which discloses an alcohol concentration of 0.08 or more, or if the officer otherwise makes the determination based on probable cause that the person operated a vehicle under the influence of alcohol and/or drugs or other controlled substances, the officer directing administration of the test or making such determination shall arrest the person and on behalf of the department serve on the person immediate notice of the department's intention to suspend the person's license to operate a motor vehicle. Such officer also shall submit a sworn report to the Department certifying one of the following:

(1) the test was requested pursuant to subsection (a) and the person refused to submit to testing or failed to complete it:

(2) the person submitted to a test that disclosed an alcohol concentration of 0.08 or more; or,

(3) the officer made an arrest based on probable cause that the person operated a vehicle under the influence of alcohol or drugs or other controlled substances.

(f) Upon receipt of the sworn report of a law enforcement officer submitted under subsection (e), the department shall:

(1) for a first offense, suspend the person's license for a period of not less than (90) days, except that under such suspension a person may operate a motor vehicle, after (15) days beginning on the date of the suspension, to and from work, school, an alcohol treatment program, or an interlock service facility, if a certified ignition interlock device is installed on each of the motor vehicles owned or operated, or both, by the person;⁴ and

(2) for a second or subsequent offense, suspend the person's license for a period of time not less than (one year), except that under such suspension a person may operate a motor vehicle, after (45) days beginning on the date of the suspension, to and from work, school, an alcohol treatment program, or an interlock service facility, if a certified ignition interlock device is installed on each of the motor vehicles owned or operated, or both, by the individual.⁵

(g) On behalf of the department, the law enforcement officer submitting the sworn report under subsection (e) shall serve immediate notice of the suspension on the person, and the suspension shall be effective not later than (30) days after the date on which the individual refused to submit to a chemical test or received notice of having been determined to be driving under the influence of alcohol, in accordance with the procedures of the State.⁶ If the person has a valid license, the officer shall take the driver's license of the person and issue a temporary license valid for the notice period. The officer shall send the license to the department along with the sworn report under subsection (e). If approved by the Department, a citation or notice of suspension issued by the officer also may serve as the temporary license certificate.

(h) In cases where the law enforcement officer has not served notice, the department shall give reasonable notice as provided in section (insert reference to appropriate state notice provision) and the suspension shall be effective not later than (30) days after the date on which the individual refused to submit to a chemical test or received notice of having been determined to be driving under the influence of alcohol, in accordance with the procedures of the State.⁷ If the address shown in the law enforcement officer's report differs from that shown on the department records, the notice shall be mailed to both addresses.

(i) Any person whose license is suspended under this section may make a written request for a hearing within 10 days of being issued notice of an order of suspension. The request shall state the grounds upon which the person seeks to have the suspension rescinded. The hearing shall be held within (20) days after filing of the request in the county in which the alleged offense occurred, unless the person and the department agree to a different location. If a person files a timely request for a hearing and the hearing cannot be held within 20 days, the department shall issue the individual a temporary license extension that is valid until the date of the hearing. The hearing shall be recorded and be conducted by the department's designated agent. The hearing may be conducted upon a review of the law enforcement officer's own reports, provided however that the person may subpoena the officer. The department may issue subpoenas to compel the attendance of witnesses. The scope of the hearing shall be limited to the issues of:

- (1) whether the law enforcement officer requested a test;
- (2) whether the person was advised as required by subsection (d);
- (3) whether the person was driving a vehicle;
- (4) whether the person refused to submit to testing or failed to complete it;

and

(5) whether a properly administered test or tests disclosed an alcohol concentration of 0.08 or more.

Section 105. Zero tolerance - Applicable to persons under age 21: implied consent to testing; administrative license revocation for refusal to submit to chemical test or having blood alcohol concentration of .02 or more; notice to persons under the age of 21 years prior to licensure; duties of the officer and opportunity for a hearing.

(a) Notwithstanding any other provision of law, it is unlawful for a person under the age of 21 years who has a blood alcohol concentration of 0.02 or more, as measured by a preliminary alcohol test or a test authorized by section 103, to drive a vehicle.

(b) If a law enforcement officer detains a person under the age of 21 years who is driving a vehicle, and the officer has reasonable cause to believe that the person has any measurable amount of alcohol in his or her system and a preliminary alcohol test is immediately available, the officer shall request that the person take a preliminary alcohol test to determine the possible presence and amount of alcohol in the person. If a preliminary alcohol test is

not immediately available, the officer may request that the person submit to chemical testing of his or her blood or breath pursuant to the requirements of sections 103.

(c) Any person under the age of 21 years who drives a vehicle, or his or her parent or guardian on behalf of such person under the age of 21 years, is deemed to have given consent to a preliminary alcohol test or any test authorized by sections 103 and 107 for the purpose of determining the presence of alcohol in the person, if such person was lawfully detained for an alleged violation of subsection (a).

(d) Any person under the age of 21 years who is dead, unconscious or who is otherwise in a condition rendering such person incapable of refusal, shall be deemed to have provided the consent authorized by this subsection and the test or tests may be administered.

(e) A person under the age of 21 years requested to submit to a test as provided by this section shall be advised by the law enforcement officer requesting the test that a refusal to submit to or the failure to complete a preliminary alcohol test or a test authorized by sections 103 and 107, as requested by the officer, will result in the suspension of such person's license to operate a motor vehicle. A law enforcement officer's failure to advise the person in accordance with this section does not affect the admissibility of test refusals or failures in any subsequent administrative hearing or criminal case.

(f) If the person refuses to take or fails to complete the preliminary alcohol test, or refuses to take or fails to complete a chemical test if a preliminary alcohol test is not immediately available, or if the person takes the preliminary alcohol test and that test reveals a blood alcohol concentration of 0.02 percent or more, or if the person takes a chemical test pursuant to the provisions of section 103 revealing a blood alcohol concentration of 0.02 or more, the officer shall proceed as follows:

(1) Acting on behalf of the department, the officer shall serve the person with a notice of an order of suspension of the person's driving privilege.

(2) The officer shall take possession of any driver's license issued by this State which is held by the person. On behalf of the department, when the officer takes possession of a valid driver's license, the officer shall issue a temporary driver's license. The temporary driver's license may be an endorsement on the notice of the order of suspension and shall be valid for not more than 30 days from the date of issuance.

(3) Within 5 business days after the day the notice of suspension is served, the officer shall forward to the department a copy of the completed notice of order of suspension, the driver's license if taken into possession pursuant to paragraph (2), and any other reports which may be required by law or regulation.

(g) Upon receipt of the sworn report to the department certifying the immediate license suspension, the department shall:

(1) for a first offense, suspend the person's license for a period of not less than (90) days, except that under such suspension an person may operate a motor

vehicle, after (15) days beginning on the date of the suspension, to and from work, school, an alcohol treatment program, or an interlock service facility, if a certified ignition interlock device is installed on each of the motor vehicles owned or operated, both, by the person;⁸ and

(2) for a second or subsequent offense, suspend the person's license for a period of not less than (one year), except that under such suspension an individual may operate a motor vehicle, after (45) days beginning on the date of the suspension, to and from work, school, an alcohol treatment program, or an interlock service facility, if a certified ignition interlock device is installed on each of the motor vehicles owned or operated, or both, by the person.⁹

(h) Before issuing a driver's license or permit to any person under the age of 21 years, the department shall inform the applicant of, and the applicant shall sign a statement acknowledging notification of, the following information:

(1) It is unlawful for anyone under the age of 21 years to drive with a BAC of .02 or greater, as measured by a preliminary alcohol test or chemical test.

(2) The penalty for refusal to take or failure to complete a preliminary alcohol test or chemical test or for driving with a blood alcohol concentration of .02 or greater is a license suspension of (90) days for a first offense and (one year) for a second or subsequent offense.

(i) A license suspension under this section shall become effective not later than (30) days after the date on which the individual refused to submit to a chemical test or received notice of having been determined to be driving under the influence of alcohol, in accordance with the procedures of the State.¹⁰

(j) Any person whose license is suspended under this section may make a written request for a hearing within 10 days of being issued a notice of an order of suspension. The request shall state the grounds upon which the person seeks to have the suspension rescinded. The filing of the request shall not stay the suspension. The hearing shall be held within (20) days after filing of the request in the county in which the alleged offense occurred, unless the person and the department agree to a different location. If a person files a timely request for a hearing and the hearing cannot be held within 20 days, the department shall issue the individual a temporary license extension that is valid until the date of the hearing. The hearing shall be recorded, and be conducted by the department's designated agent. The hearing may be conducted upon a review of the law enforcement officer's own reports; provided, however, that the person may subpoena the officer. The department may issue subpoenas to compel the attendance of witnesses. The scope of the hearing shall be limited to the issues of:

- (1) whether the law enforcement officer requested the test;
- (2) whether the person was advised as required by subsection (e);
- (3) whether the person was driving a vehicle;
- (4) whether the person refused to submit to the testing or failed to complete

it;

- (5) whether a properly administered test or tests disclosed an alcohol

concentration of 0.02 or more.

(k) Notwithstanding any other provision of law, the department may require anyone under the age of 21 years who has had his or her license suspended pursuant to this section, as one requirement to have the license reissued, to attend a course or participate in counseling designed to discourage those under the age of 21 years from drinking alcohol.

Section 106. Preliminary Alcohol Test

When a law enforcement officer has articulable grounds to suspect that a person may have been driving under the influence of alcohol, or that a person under age 21 may have been operating a vehicle with any measurable amount of alcohol in his or her system, the officer may request that the person submit to a preliminary alcohol test to determine his or her blood or breath alcohol concentration using a device approved by the (State Department of Health) for that purpose. Nothing in this section precludes the officer from further requesting or requiring additional testing pursuant to any section of this Act or any other provision of law.

Section 107. Chemical test of drivers in serious personal injury or fatal crashes

Notwithstanding the provisions of any other law, when the driver of a vehicle is involved in a traffic crash resulting in death or serious personal injury of another person, and there is reason to believe that the driver was in violation of section 102(b) or (d), the driver may be compelled by a police officer to submit to a test or tests of his or her blood, breath or urine to determine the person's alcohol concentration or the presence of other drugs.

Section 108. Unlawful to consume alcoholic beverages while driving a motor vehicle; unlawful to possess an open container of alcoholic beverage within the passenger area of a motor vehicle while on a public highway.

(a) It is unlawful for a person to consume an alcoholic beverage while driving a vehicle on a public highway.

(b) Except as otherwise provided in this subsection, it is unlawful for a person to possess an open container of an alcoholic beverage within the passenger area of a motor vehicle while the motor vehicle is on a public highway. This prohibition does not apply to passengers, other than the driver, of a motor vehicle designed, maintained, or used primarily for the transportation of persons for compensation or to passengers located in the living quarters of a house coach, house trailer, or recreational vehicle.¹¹

(c) Violations of this section are punishable by a fine of not more than (\$500) or imprisonment for not more than (30) days or both such fine and imprisonment.

- 1 Source - SAFETEA-LU Technical Corrections Bill amending 23 U.S.C. 164(a)(5)(A)-(B) (current as of July 2, 2007).
- 2 Source - 23 U.S.C. 410(c)(4)(A).
- 3 Source - SAFETEA-LU Technical Corrections Bill amending 23 U.S.C. 164(a)(5)(A)-(B) (current as of July 2, 2007).
- 4 Source – 23 U.S.C. 410(c)(7)(A)(i).
- 5 Source – 23 U.S.C. 410(c)(7)(A)(ii).
- 6 Source – 23 U.S.C. 410 (c)(7)(B).
- 7 Source – 23 U.S.C. 410 (c)(7)(B).
- 8 Source – 23 U.S.C. 410(c)(7)(A)(i).
- 9 Source – 23 U.S.C. 410(c)(7)(A)(ii).
- 10 Source – 23 U.S.C. 410(c)(7)(B).
- 11 Source – 23 U.S.C. 154(b)(2)(A)-(B).