

# PREVENTING FIRST-TIME DWI OFFENSES

**First-Time DWI Offenders in California, New York, and Florida:  
An Analysis of Past Criminality and Associated Criminal Justice Interventions**



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16. Abstract Research suggests that there are far more people driving impaired than arrested each year. Additional data supports that a person arrested for the first time for driving under the influence (DUI) or driving while impaired (DWI) may have driven many times impaired before getting caught. This report details a study that determined if there were common prior offenses among first-time DWI offenders, and to identify strategies that are used to address the identified offenses to determine if there are potential opportunities to expand those efforts to prevent impaired driving. Utilizing State-level criminal history data, statistical analyses reveal that between one-quarter to almost one-half of first-time DWI offenders in California, Florida, and New York were arrested for criminal or traffic offenses, prior to their arrest for DWI. Among those with prior arrest records, assault (including domestic assault), drug, theft, and traffic were the most frequently identified offenses. Criminal justice programs and strategies implemented by pretrial services agencies, the courts, and corrections agencies, as well as motor vehicle agency programming, were identified as potential areas in which to focus DWI prevention efforts among assault, drug, theft, and traffic offenders. Strategies that have proven effective in preventing DWI offenses that may be incorporated into existing criminal justice strategies include intensive community supervision, alcohol ignition interlock installation, substance abuse treatment, and DWI prevention education.			
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# TABLE OF CONTENTS

Acknowledgements .....	ii
Executive Summary .....	v
Chapter One: Background .....	1
Chapter Two: Methodology .....	2
Chapter Three: DWI Causes and Correlates Literature Review .....	6
Chapter Four: Data Analyses of Past Criminality .....	9
Chapter Five: Identification of Programs and Strategies .....	21
Chapter Six: Discussion and Conclusions .....	33
Principal Research Investigator .....	38
Appendices .....	39
Appendix A: Data Descriptions .....	40
Appendix B: Data Cleansing and Formatting Methodologies .....	53
Appendix C: State Data Frequency Tables .....	62
Appendix D: State DWI Laws .....	69
Appendix E: Criminal Justice System Overview .....	119
Sources .....	126



## EXECUTIVE SUMMARY

Each year there are approximately 1.5 million arrests for impaired driving in the United States.<sup>1</sup> Approximately two-thirds of those arrested for impaired driving each year do not have previous impaired driving convictions. Despite these high numbers of annual arrests, research suggests that there are far more people driving impaired than are arrested each year. A survey of the nation's driving age population 10 years ago estimated that approximately 1 billion driving trips are made each year by impaired drivers.<sup>2</sup> Given the sheer number of people driving impaired each year, and the potentially deadly consequences of impaired driving, NHTSA has elected to study the criminality of people arrested for first-time DWI<sup>3</sup> offenses. The objectives of this project are to determine if there are common prior offenses among first-time DWI offenders, and to identify strategies that are used to address the identified offenses to determine if there are opportunities to expand those efforts to prevent impaired driving.

Using State-level criminal history data, statistical analyses reveal that between one-quarter to almost one-half of first-time DWI offenders in California, Florida, and New York were arrested for criminal or traffic offenses prior to their arrest for DWI. In California and Florida, States in which traffic offenses are included in the analyses, more than one in three people arrested for first-time DWI have prior arrest histories in that same State. Among those with prior arrest records, four offense types were most frequently identified: assault (including domestic assault), drug, theft and traffic. In the three States, 48 to 85 percent of first-time DWI offenders with prior records had been arrested for assault, drug, or theft offenses.

Criminal justice programs and strategies implemented by pretrial services agencies, the courts, and corrections agencies, as well as motor vehicle agency programming, were identified as potential areas in which to focus DWI prevention efforts among assault, drug, theft and traffic offenders. Potential DWI prevention approaches with offenders include using existing risk assessment processes in both the pretrial and corrections phases of the criminal justice system to identify offenders presenting with assault, drug, theft or traffic offenses, in combination with other characteristics that correlate with DWI behavior. Upon identification of these offenders with elevated DWI risk factors, specific services may be recommended to them, or required of them, as a component of their court involvement. Strategies that have proven effective in preventing DWI offenses that may be incorporated into existing criminal justice strategies include intensive community supervision, alcohol ignition interlock installation, substance abuse treatment, and DWI prevention education. These ideas are in early phases, derived from the findings of this project with the goal of preventing future DWI behavior.

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<sup>1</sup> Federal Bureau of Investigation (2007), Table 29.

<sup>2</sup> Substance Abuse and Mental Health Services Administration (1998).

<sup>3</sup> For the purposes of this report the abbreviation "DWI" will be interchangeable with the terms "DUI", "DWAI," and "OWI," and will be used to refer to all behavior involving driving while impaired by alcohol and/or drugs. NHTSA defines impaired driving as operating a motor vehicle while affected by alcohol and/or other drugs, including prescriptions, over-the-counter medicines, or illicit substances. "Impaired driving" includes, but is not limited to, impairment, as defined by individual State statutes.





# CHAPTER ONE: BACKGROUND

## Introduction

Each year there are approximately 1.5 million arrests for impaired driving.<sup>4</sup> Approximately two-thirds of those arrested for driving while intoxicated or impaired (DWI) or driving under the influence (DUI) each year do not have previous DWI or DUI convictions. Despite these high numbers of arrests, research suggests that there are far more people driving impaired than are arrested each year. According to a 2001 Gallup Organization national survey of the nation's driving age population, an estimated 1 billion driving trips are made per year by impaired drivers, including people driving within two hours after drinking. The study, called Driving After Drug or Alcohol Use, estimated that 23 percent (38 million) of drivers used alcohol within only two hours of driving, and 5 percent (9 million) of drivers operated motor vehicles within two hours after drug use with or without alcohol.<sup>5</sup>

Given the sheer number of people driving impaired each year, and the potentially deadly consequences of impaired driving, NHTSA is focusing efforts on better identifying and preventing first-time DWI offenses. In order to accomplish this task, NHTSA has elected to study the criminality of people arrested for first-time DWI offenses. This project uses State-level DWI arrest and criminal history data to examine the prior offense patterns among first-time DWI offenders. Arrest is the initial contact with the criminal justice system that may present an opportunity to identify a point of intervention. Conviction rates for common prior offenses were included in this report to provide perspective on the percentage of offenders who have longer term contact with the courts or corrections department compared to those that are not convicted and are only involved in pretrial criminal justice system contact. Leveraging this statistical analysis, this project investigates the various programs and strategies that are used to address the identified common prior offenses and explores the potential for DWI prevention efforts to be incorporated as components of existing programs and strategies.

## Objectives

The objectives of this project are to:

1. Determine common and perpetuating offenses among first-time DWI offenders, and
2. Identify strategies that are used to address the common and perpetuating offenses to determine if there are potential opportunities to expand those efforts to prevent drinking and driving.

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<sup>4</sup> Federal Bureau of Investigation (2007), Table 29.

<sup>5</sup> Substance Abuse and Mental Health Services Administration (1998).

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## CHAPTER TWO: METHODOLOGY

### Initial Literature Review: Causes and Correlates of DWI

An initial literature review was conducted at the outset of the project to comprehensively assess the existing state of knowledge regarding links between criminal offenses and subsequent DWI offenses. In addition to identifying research specific to prior criminal histories, literature examining the causes and correlates of DWI was also examined. Potential datasets for statistical analyses were pursued during this literature review. The following academic search engines and databases were used:

- Academic Search Premier;
- LexisNexis Academic;
- Social Sciences Citation Index;
- Criminal Justice Periodicals Index;
- Criminal Justice Abstracts; and
- PAIS (Public Affairs Information Service) International.

### Definition of “First-Time DWI Offender”

The first objective of this project is to “determine common and perpetuating offenses among first-time DWI offenders.” For the purposes of this project the definition of a first-time DWI offender is a person who did not have an arrest for a driving while impaired by alcohol or drugs related charge in the identified State of analysis, prior to the timeframe of analysis.

### Identification of Data Sources

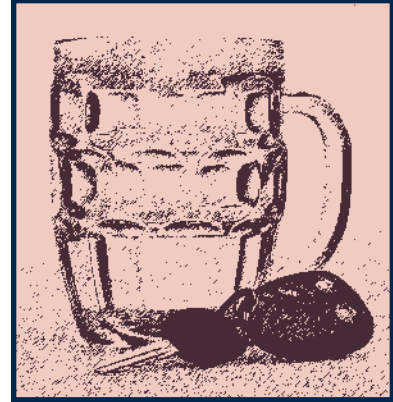
In order to analyze criminal histories of first-time DWI offenders, existing datasets were investigated. Initially, national datasets were examined in an effort to identify one dataset that adequately sampled the country’s DWI offender population. Unfortunately, potential national datasets were eliminated due to small sample sizes, or datasets that did not represent the full spectrum of impaired drivers. Once national datasets were eliminated, State-level data was pursued. Discussions with contacts in over 30 State criminal justice departments, court offices, and motor vehicle departments provided information regarding the status of each State’s data availability and accessibility.

State-level data requirements were the following:

1. Arrest data collected and reported uniformly from all jurisdictions
2. Data maintained in an automated database format that allows for automated statistical analyses
3. Criminal history data dating back at least ten years
4. Datasets including the following elements: unique individual identifier, first-time DWI arrest date, offense/charge, prior offenses, prior offense arrest dates

There exists significant variation among States in terms of criminal history databases. For example, some States maintain no automated statewide criminal history databases, others maintain statewide databases but track only offense based information; still others maintain automated statewide criminal history databases.

Once States that both maintain a statewide criminal history database and are authorized to release data for research purposes were identified, data from States with rural, urban and suburban populations were pursued. Geographic diversity across the country and total population were considered. Ultimately, official data requests were made to Florida, New York, Alabama and California. In order to procure the data, State officials were contacted; each State's process for the release of datasets for research purposes was followed. Descriptions of each individual dataset are included in Appendix A.



## Data Analyses

Upon receipt of the various datasets, each was cleansed and formatted to identify first-time DWI offenders and create a chronological historical record of any prior offenses. In order to maximize the effectiveness of the data analysis component of the study, offenses were consolidated into offense types, as necessary. Each State uses numerical codes to identify each charge, organized according to offense type, facilitating consolidation. During the analyses, offense types were grouped as similarly as possible across States, within each State's identified coding practices. The data were then formatted to ensure that the individual first-time DWI offender was the primary unit of analysis. Detailed descriptions of data cleansing, formatting methodologies and offense consolidation activities specific to each State included in the final analyses are identified in Appendix B.

Data from Florida, New York, Alabama, and California, were analyzed independently.

A statistical analysis tool called Statistical Package for the Social Sciences, SPSS 15.0, was used to identify the type, time, and frequency of prior offenses, as well as demographic information for first-time DWI offenders. Due to the fact that people in the dataset could have several prior arrests, and each event could include several offenses, a summary variable was computed for each type of offense.

Upon inspection and analysis of the criminal history data available for Alabama, it was determined that the data available for analysis did not include all DWI arrests in the State during the identified timeframe, as is the case with the datasets from California, Florida, and New York. Published data indicates that in 2001 there were 19,386 arrests for DWI in Alabama. Of those arrested, 14,937, or 77 percent, were considered first-time offenders.<sup>6</sup> The dataset with full criminal histories available for the purposes of this project includes only 5,527 people arrested for DWI during a two-year period from January 1, 2006, through December 31, 2007, a significantly smaller subset of all DWI arrests. While these people did not have prior DWI offenses included in the dataset, it could not be confirmed that these people had no prior DWI arrests in the State.

A full analysis using this smaller subset revealed findings consistent with the findings of the more comprehensive datasets in California, Florida, and New York. However, it was determined that the data analysis findings for Alabama would not be included in detail in this final report because:

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<sup>6</sup> The Century Council (2007).

1. The Alabama data subset is not a true random subset of all Alabama first-time DWI arrests;
2. The use of a non-random subset would be inconsistent with the methodology applied to the analyses of the California, Florida, and New York datasets; and
3. The California, Florida, and New York datasets include significantly larger numbers of arrestees for analysis; the removal of the Alabama arrestees does not significantly reduce the total number of first-time DWI arrestees included in this final report.

Despite these variances in the datasets, it should be noted that the Alabama findings regarding prior criminal offense rates and types are consistent with those of California, Florida, and New York.

Using the full analyses of the California, Florida, and New York datasets, findings were compared in order to identify trends and similarities across these three States. Variations in DWI laws, criminal and traffic arrest practices, and data collection, coding and maintenance practices exist across these States. This report summarizes the findings across these States, as well as individual State-level findings, descriptions of the datasets (Appendix A), State Data Frequency Tables (Appendix C), and the DWI laws for each State (Appendix D).

## **Program and Strategy Identification**

The second objective of the project is to “identify strategies that are used to address the common and perpetuating offenses [of first-time DWI] to determine if there are potential opportunities to expand those efforts to prevent drinking and driving.” By intervening with offenders convicted of crimes identified as common prior offenses for first-time DWI offenders, before a DWI occurs, the impaired driving behavior may be prevented. Criminal justice system involvement offers an opportunity for such an intervention, given the arrestee’s required compliance with court processes, and a convicted offender’s mandated compliance with a specific sentence. In order to identify potential intervention opportunities, the criminal justice system, including the bureaucratic structures responsible for court ordered services, supervision or incarceration, as well as sentencing patterns for the identified common prior offenses, needs to be clearly understood.

### ***Initial State Level Approach***

Following the completion of the first State-level data analysis, initial programs and strategies research was begun for that particular State. Preliminary State-level information was collected, including an overview of the criminal justice system, sentencing patterns, and programs and strategies information. As analyses of the remaining State-level datasets were completed, findings confirmed similar prior offenses were common among first-time DWI offenders across the three States. Given this statistical consistence in offense patterns, criminal justice information nationwide was examined.

### ***Information Gathering***

In order to accurately describe potential points of criminal justice system intervention for offenders with the identified prior criminal histories, the entire criminal justice process was examined. Pretrial services (those provided to the offender and to the court during the period prior to adjudication and disposition of criminal offenses) were examined in detail. Conviction rates and sentencing patterns specific to the relevant offense types were researched, including the length of sentence, the type of sentence, the actual time served, and additional court-ordered sanctions. The corrections system was also examined. Information regarding the bureaucratic structures responsible for overseeing the sentencing, including State and local roles, was collected. Details regarding the use of standard screening or needs assessment tools, as well as program-specific information relevant to the identified offense types, were collected. Finally, relevant programs operated through State motor vehicle departments were also investigated.

This information was gathered through Internet resources and telephone and e-mail communications with State and local entities, as well as public and private research groups. In addition, a significant academic literature review (see below) was conducted to identify relevant programs throughout the country that address the identified offense types and are effective at reducing recidivism. As programs were identified, they were conceptually evaluated for the potential for expansion to include impaired driving prevention activities.

### ***Literature Review***

One component of the information-gathering process was to conduct a literature review to use academic sources to identify information relevant to the topics identified above. Relevant criminal justice research and program evaluations were identified in academic, peer reviewed journals, local and national newspapers, and internet publications. Academic databases used included:

- LexisNexis Academic;
- Criminal Justice Periodicals Index;
- Criminal Justice Abstracts;
- PsychINFO;
- Social Sciences Citation Index; and
- Academic Search Complete.

### ***Program/Strategy Selection Criteria***

In order to identify programs or strategies that have the potential to reduce impaired driving among those who commit the identified offenses, information regarding the following types of programs or strategies was gathered:

1. Programs that provide counseling, treatment or education to offenders charged with the identified offenses;
2. Programs that have the potential for expansion to include DWI prevention education activities;
3. Programs that include the utilization of a screening or needs assessment tool that provides information regarding characteristics that correlate with DWI behavior; and
4. Programs that have been evaluated as successful at reducing overall recidivism among participants.

There are many of these types of programs and strategies in the criminal justice system. Rather than focusing on specific program models, general types of programs were examined. Those programs or strategies that met Criteria #1 and #2, and either #3 or #4, as noted above, were researched and included in the final report.

## CHAPTER THREE: DWI CAUSES AND CORRELATES LITERATURE REVIEW

### Introduction

An initial literature review was conducted at the outset of the project to comprehensively assess the existing state of knowledge regarding links between criminal offenses and subsequent DWI offenses. A significant amount of research has been conducted regarding characteristics and behaviors of drinking drivers. However, research that examines specific links between prior criminal or traffic offenses and subsequent DWI offenses is more limited. Research relevant to this project can be effectively grouped into three categories: traffic offenses and DWI, criminal offenses and DWI, and characteristics or personality traits of DWI offenders.

### Existing Research

#### *Traffic Offenses Linked to DWI Offenses*

During the 1980s and early 1990s a significant body of research examined links between “bad drivers” or “high risk drivers” and DWI arrests. “Bad drivers” and “high risk drivers” were defined as those licensed drivers with a history of traffic violations. Most of this research identified correlations between prior arrests for traffic offenses and arrests for DWI.<sup>7</sup> More recent research, completed in the late 1990s, pursued these correlations further to determine that prior traffic offenses are a significant factor in predicting recidivism among DWI offenders. In other words, those drivers with more significant traffic offense histories are more likely to become repeat DWI offenders than those DWI offenders with more limited traffic offense histories.<sup>8</sup>

While much of the existing research in this area focuses exclusively on the specific “high-risk” driving behavior that correlates with DWI offenses, findings are inconclusive or contradictory regarding whether high-risk driving behavior is significantly linked to impaired driving behavior, or linked only to DWI arrest, given the poor driving skills demonstrated by this driving group in general. In other words, is a high-risk driver who drives after drinking more likely to be arrested simply due to poor driving skills than a non-high-risk driver who drives after drinking just as regularly but demonstrates better driving skills.

To address this question, some authors suggest that high-risk drivers tend toward a more high-risk lifestyle, demonstrating more antisocial behavior in multiple areas of their lives, not exclusively behind the wheel. Yu and Williford, in an examination of the relationship between high risk driving, problem drinking and DWI, actually find that high-risk driving increases the chances of self-reported drinking and driving, but decreases the chances of DWI arrest. The authors suggest that this finding occurs among repeat DWI offenders who may not change drinking driving behavior, but may drive more cautiously to avoid detection by law enforcement. Such findings suggest that a broader examination of DWI and high-risk driver personality characteristics may provide insight into impaired driving behavior. Demonstrated antisocial behavior (criminal activity) and antisocial personality characteristics are discussed in more detail in the DWI research noted below.

<sup>7</sup> D. Donovan, G. Marlatt, & P. Salzberg (1983); D. Donovan, R. Umlauf, & P. Salzberg (1990); S. Maisto, L. Sobell, P. Zelhart, G. Connors, & T. Cooper (1979); J. Wilson (1992); J. Yu & W. Williford (1993) Problem Drinking and Risk/Sensation Seeking: Specifying a Causal Model on High-Risk Driving.

<sup>8</sup> L. Marowitz (1996); F. Marsteller, D. Rolka., & A. Falek. (1997).

## *Criminal Offense Linked to DWI Offenses*

A small but varied body of research conducted over the past 30 years examines criminal histories of DWI offenders. This research suggests that a significant minority of first-time DWI offenders have records of prior criminal behavior. Some of this research uniquely examines the criminal history issue. Other research was conducted to examine factors which contribute to recidivism among DWI arrestees. Finally, some of this research was conducted in the process of examining criminal offending trends among delinquent or criminal populations in general. Unfortunately, the findings regarding the types of prior offenses common to first-time DWI offenders are limited.



In 1985 Argeriou, McCarty, and Blacker closely examined the criminal histories of a small sample of DWI offenders in Massachusetts (n=1,406). They found that 44.8 percent of first-time DWI offenders had been arrested on a prior occasion. However, the article did not distinguish specific offense patterns unique to first-time DWI offenders from the larger group of all DWI offenders. Traffic offenses, public order offenses, and property offenses were the most common prior offenses among this DWI population.<sup>9</sup> A more recent study examining the offending patterns among juvenile substance abuse offenders in New Mexico found that DWI arrestees were more likely to have a prior arrest record, and that DWI arrestees were more likely to have a higher number of prior arrests, than other substance abuse offenders. Property offenses were the most common prior offense among the DWI arrestees, followed by substance abuse offenses. However, it should be noted that this study also did not distinguish between first-time and repeat DWI arrestees.<sup>10</sup>

Two studies published in 1992 examined the characteristics of people held in local jails for DWI offenses.<sup>11</sup> Given the incarceration status of this population these studies include more repeat impaired driving offenders than first-time DWI offenders. The 1989 Survey of Inmates of Local Jails found that 52 percent of the jailed DWI inmates were repeat DWI offenders; of all of the jailed DWI offenders, 85 percent had prior criminal convictions, including DWI. The author of this report also found that DWI offenders in jail were more likely to have more extensive criminal histories than non-DWI offenders in jail.<sup>12</sup> A second study examining the social status of DWI offenders in jail found few striking differences between the general population and DWI offenders in jail. These populations have a similar number of prior criminal offenses; jailed DWI offenders have more prior criminal offenses than the general driving population.<sup>13</sup> However, these studies did not distinguish criminal history differences between first-time and repeat DWI offenders, included prior DWI offenses in the prior criminal history calculations, and did not identify specific prior criminal history patterns among this population.

During the past 20 years research has also focused on repeat DWI offenders in attempts to identify predictors of recidivism among first-time DWI arrestees. Multiple researchers identified the presence of prior nondriving criminal offenses as a significant factor predicting recidivism among first-time DWI offenders.<sup>14</sup> However, findings regarding specific prior offenses or offense types are nonexistent or inconclusive.

<sup>9</sup> M. Argeriou, D. McCarty, & E. Blacker (1985).

<sup>10</sup> N. Lewis & I. Chang (2005).

<sup>11</sup> R. Cohen (1992); R. Weisheit, & J. Klofas (1992).

<sup>12</sup> R. Cohen (1992) 2.

<sup>13</sup> R. Weisheit & J. Klofas (1992).

<sup>14</sup> Gould & Gould (1992); T. Nochajski, B. Miller, W. Wiczorek, & R. Whitney (1993); E. Wells-Parker, P. Cosby, & J. Landrum (1986).

## ***Personality Characteristics of DWI Offenders***

During the past 30 years a significant body of research has examined general personality characteristics or behaviors that present among DWI offenders.<sup>15</sup> Identified correlates of impaired driving behavior include characteristics such as gender and age,<sup>16</sup> socio-economic background, non-married,<sup>17</sup> depressed,<sup>18</sup> antisocial attitudes<sup>19</sup> and stressful experiences.<sup>20</sup> While many behaviors and characteristics may correlate with impaired driving behavior, causes of impaired driving behavior are more difficult to identify and require sophisticated research methodologies and statistical analyses to conclusively isolate from correlates.

A literature review published in 1996 reviews the drinking and driving literature existing at that time in an attempt to distinguish between identified causes and correlates of drinking and driving behavior.<sup>21</sup> Findings suggest that one cause of such behavior that has been scientifically proven is alcohol consumption; both the frequency of alcohol consumption and the quantity of alcohol consumed positively impact DWI rates. In addition, the authors conclude that existing research supports the concept that antisocial behavior is a cause of DWI recidivism. Antisocial behavior is defined in various studies as “moral attachment, moral attitude, disrespect for legal authorities ...and criminality”.<sup>22</sup>

## ***Conclusions***

A review of relevant drinking driving research provides context and background to this study. Very limited research has focused exclusively on the correlation between prior criminal behavior and first-time DWI arrests. While more traffic offense research has been conducted, much is dated and little has been performed in conjunction with criminal offense research. If, as the research suggests, a documented cause of repeat DWI behavior is antisocial personality characteristics, a more focused analysis of prior criminal offenses among first-time DWI offenders will provide valuable information for potential future interventions. Antisocial behavior is often manifested in criminal behavior; identifying specific offense types that correlate with subsequent DWI behavior will further clarify this area of research.

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<sup>15</sup> C. Veneziano, L. Veneziano, & M. Fitcher (1993); J. Buntain-Ricklefs, F. Rivera, D. Donovan, P. Salzberg, & N. Polissar (1995); I. Chang, S. Lapham, & K. Barton (1996).

<sup>16</sup> D. Donovan, H. Queissen, P. Salzberg, & R. Umlauf (1985).

<sup>17</sup> Veneziano et al. (1993).

<sup>18</sup> Ibid.

<sup>19</sup> J. Wilson (1992); J. Yu & W. Williford (1993) *Problem drinking and high-risk driving: an analysis of official and self-reported drinking-driving in New York State*.

<sup>20</sup> Veneziano et al. (1993).

<sup>21</sup> S. MacDonald & R. Mann (1996).

<sup>22</sup> Ibid.



## CHAPTER FOUR: DATA ANALYSES OF PAST CRIMINALITY

### Summary of Findings

This report examines the past criminal histories of first-time DWI offenders in California, Florida, and New York, with the specific intent of identifying common prior offenses among these offenders.<sup>23</sup> Findings from data analyses in the three States are consistent; among first-time DWI offenders, 26 percent to as many as 44 percent have been involved in criminal activity prior to their arrest for DWI. In California and Florida, States in which traffic offenses are included in the analyses, more than one in three people arrested for first-time DWI have a prior arrest history in that same State. A summary of offense history, arrest timeline, and demographic findings follows.

### Offense History

The data demonstrates that among first-time DWI offenders with prior criminal histories, there are indeed common prior offenses. Drug, assault<sup>24</sup> and theft offenses were more common than other prior offenses among first-time DWI offender populations in the three States. In all, 48 percent to 85 percent of the first-time DWI offenders in California, Florida, and New York with a prior offense had been arrested for at least one of these three offenses. The existence of this statistical pattern in three geographically diverse States, three of the four most populous States in the country, may indicate that these findings would likely be similar across other States as well. In addition to these offenses, traffic offenses were also common among first-time DWI offenders. Eight to 12 percent of all first-time offenders in California and Florida had been arrested for criminal traffic offenses prior to the first-time DWI arrest.

The consistent data findings in three States representing geographic diversity and significant populations provide valuable insight into the offense histories of first-time DWI offenders. Although a slight majority of the consolidated population did not have a prior arrest, close to one in three had previously been in trouble with the law.<sup>25</sup> Considering such a significant minority of the population was arrested for offenses related to drugs, assault, or theft, one may conclude that there are groups of first-time DWI offenders with similar characteristics in regards to criminal activity. While this does not mean that we would predict a future DWI offense for all drug, assault, and theft arrestees, it suggests that people with these offense histories may be at a heightened risk for a future DWI arrest.

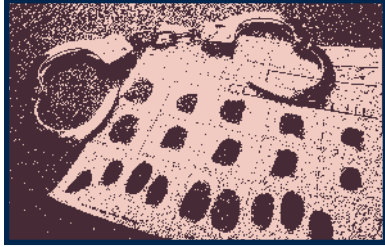
It should also be noted that prior offense findings from the Alabama dataset analysis are consistent with the findings in Florida, California, and New York. The most common prior offenses among the Alabama first-time DWI offenders are drug/alcohol, assault, theft and traffic. However, as described in Chapter 2, the Alabama analysis is based on a dataset that is composed of only a small number of first-time DWI arrestees in the State, and therefore not methodologically comparable to the analyses completed for Florida, California, and New York.

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<sup>23</sup> For this report, the term “offender” is used to describe a person who has been arrested for a criminal or traffic offense. “Offender” is not inclusive of all who committed an offense but were not necessarily arrested. Conversely, “offender” does include those who were arrested, but who were subsequently found not guilty or against whom charges were not filed or were dismissed. Moreover, this report only considers arrests in each of the identified states, but not across states, which has the dual effect of expanding the pool of first-time DWI offenders and limiting the number of first-time DWI arrestees with prior criminal records.

<sup>24</sup> The assault offense category includes domestic and non-domestic assault-and-battery offenses.

<sup>25</sup> State datasets are limited to offenses that occurred in each State.



## Arrest Timelines

First-time DWI offenders with prior offense histories often had contact with law enforcement just months before the DWI arrest. Among first-time DWI arrestees, approximately one-third were arrested less than one year prior to the DWI offense. In fact, approximately 20 percent had been arrested within the prior six months of the DWI arrest. These timeframes are found consistently across the three datasets. The majority of DWI offenders with prior arrests in California and Florida

had been arrested within the previous two years. New York's timeframes were slightly longer in duration. This variation may be the result of the exclusion of traffic arrests in the dataset.

## Demographics

Limited demographic data was available only for the States of California and New York. Age and gender characteristics of first-time DWI arrestees in these States were examined. Demographic analyses found the age of first-time DWI offenders was consistent in California and New York. More than 45 percent of all first-time arrestees in these States were under the age of 30. More than 70 percent were under 40. First-time DWI offenders with prior arrests were significantly more likely to be males, in both States.

## Dataset Overview

Datasets from California, Florida, and New York were analyzed. These States represent three distinct geographical regions of the United States; encompass rural, suburban, and urban jurisdictions; and represent a total population of 74,102,187, close to one-quarter of the population of the United States. Data regarding 270,761 people who were considered first-time DWI offenders in these States were analyzed for this project. This number represents more than 25 percent of the estimated first-time DWI arrestees each year.

State criminal history data from recent years was analyzed in each State. Florida and New York data used DWI arrestees from 2005 and/or 2006. The California dataset used DWI arrest data from 2002. Legal definitions of offenses, arrest policies and practices, as well data collection, and coding and maintenance policies and practices, differ across the three States. In this respect, some degree of variations in State data findings should be expected. A description of each State's data is detailed in Appendix A. Data limitations within each State's dataset are detailed in the State-level analyses which follows.

Each State dataset includes criminal history data exclusive to that State. Any prior arrests in other States, for DWI or any other offenses, are not included in the reporting State's dataset. This limitation has the dual effect of expanding the pool of first-time DWI offenders, since some may have been arrested for DWI in other States, and limiting the number of first-time DWI arrestees with prior criminal records, since some may have previous non-DWI arrests in other States.

Each dataset varies with regard to the inclusion of demographic and geographic information regarding the offender and the DWI arrest. The Florida data does not provide offender demographic data but does include the county where the presenting arrest was made; California data includes basic offender demographic information and the State of residency of the offender; New York data includes basic offender demographic information and the county of residence of the offender. Offender demographic analyses were completed for California and New York; the level of detail provided in the datasets did not facilitate the analyses of rural and urban arrest patterns. The demographic analysis included in this report is limited to age and gender. Race and ethnicity findings were inconsistent and additional research is warranted to ensure that issues of disproportionate

minority contact are examined. Race and ethnicity are not key factors that impact the objective of this report. Therefore, analysis related to race and ethnicity is not included.

## Methodology

One complete criminal history dataset was obtained from a statewide source in California, Florida, and New York. Each dataset includes all DWI offenders arrested in that State during a specified timeframe, and the prior criminal and traffic offense arrest history associated with each offender.<sup>26</sup> Each dataset was cleansed and formatted to identify first-time DWI offenders and create a chronological historical record of any prior offenses. In addition, the data was formatted to ensure that the individual first-time DWI offender was the primary unit of analysis.<sup>27</sup> Detailed methodology regarding data cleansing and formatting for each State is described in Appendix B.

SPSS 15.0<sup>28</sup> was used to identify the type, time, and frequency of prior offenses, as well as demographic information for first-time DWI offenders. If necessary, offenses were collapsed into broader categories (i.e., possession of marijuana, possession of cocaine = drug offense). Because people in the dataset could have several prior arrests, and each event could include several offenses, a summary variable was computed for each type of offense. For example, if each arrest could include as many as four offenses, and an individual could have as many as three prior arrests (i.e., Arr1.1 thru Arr3.4), and assault had a value of “1,” the following program would be run to determine the number of DWI offenders with a prior assault charge:

```
if (Arr1.1=1 or Arr1.2=1 or Arr1.3=1 or Arr1.4=1 or Arr2.1=1 or Arr2.2=1 or Arr2.3=1 or Arr2.4=1 or Arr3.1=1 or Arr3.2=1 or Arr3.3=1 or Arr3.4=1) ASSAULT=1.
```

This type of program was run for each type of offense in each dataset. Similar programming was used to determine the number of arrests for each type of offense as well.

## State-Level Findings

The remainder of this report details the data analyses findings from each of the three States. State frequency tables are included in Appendix C.

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<sup>26</sup> DWI laws, arrest practices, and data collection methodologies vary by State. The New York dataset does not include prior traffic offenses. Descriptions of the individual datasets are included in Appendix A.

<sup>27</sup> Individual State data cleansing and formatting methodologies are identified in Appendix B.

<sup>28</sup> Statistical Package for the Social Sciences, a statistical analysis tool.

## CALIFORNIA

In 2002, there were 138,584 people arrested for the first time for DWI in California. Although these people experienced their first arrests in California for impaired driving, a significant minority of them had previously been arrested for other crimes. In all, 42 percent (n = 58,190) of first-time DWI arrestees had prior arrests in California, including 27 percent who had been arrested more than once and 12 percent who had been arrested on five or more separate occasions. The data suggests that past arrests for drug, assault, theft, and traffic offenses were familiar to significant numbers of first-time DWI offenders.

### Offense History

Selected Prior Offenses for First-Time DWI Offenders			
Offense	#	% of All w/ 1 <sup>st</sup> DWI	% of Those w/ Prior non-DWIs
Drug Offense	22,520	16.3%	38.7%
Assault/Battery	17,668	12.7%	30.4%
Larceny/Theft	14,127	12.4%	29.5%
Traffic Offense	11,762	8.5%	20.2%
Public Justice	11,472	8.3%	19.7%
Family Offense	10,878	7.8%	18.7%
Obstruction of Justice	10,467	7.6%	18.0%
Burglary	10,146	7.3%	17.4%
Weapon Offense	8,607	6.2%	14.8%
Stolen Property	7,111	5.1%	12.2%
Property Damage	6,253	4.5%	10.7%
Public Peace Violation	5,213	3.8%	9.0%
Robbery	3,928	2.8%	6.8%
Total w/ Prior Arrest	58,190	42.0%	100.0%
Total 1 <sup>st</sup> Time DWI	138,584	100.0%	n/a

Fully 42 percent (58,190) of the 138,584 people arrested for DWI in California for the first-time during 2002, had prior arrest records with at least one non-DWI offense. These arrests ranged from misdemeanor public order offenses to violent felonies. However, certain crimes were far more prevalent than others; drug, assault, and theft offenses were most common among DWI arrestees in California. Over 16 percent of first-time DWI offenders had previously been arrested for drug offenses, which accounts for 39 percent of those with prior arrests. Similarly, 13 percent had prior arrests for assault and 12 percent had prior theft or larceny arrests, each representing 30 percent of first-time DWI offenders with arrest histories. Somewhat fewer first-time DWI offenders had been previously arrested for traffic (9%), public justice (8%), obstruction of justice (8%), or family offenses (8%).

Number of Prior Arrests for First-Time DWI Offenders			
Total Number of Prior Arrests	#	% of All w/ 1 <sup>st</sup> DWI	% of Those w/ Prior
0	80,394	58.0%	n/a
1	20,916	15.1%	35.9%
2	10,554	7.6%	18.1%
3	6,312	4.6%	10.8%
4	4,211	3.0%	7.2%
5	3,001	2.2%	5.2%
6-9	7,484	5.4%	12.8%
10 or More	5,712	4.1%	9.8%
Total w/ Prior Arrest	58,190	42.0%	100.0%
Total 1 <sup>st</sup> Time DWI	138,584	100.0%	n/a

First-time DWI offenders also had prior arrests for burglary (7%), weapons (6%), and stolen property offenses. Somewhat fewer first-time DWI arrestees had prior arrests for stolen property (5%), property damage (5%), and public peace violations (4%).

First-time DWI offenders in California with offense histories usually had more than one previous arrest. Nearly two-thirds (64%) had multiple prior arrests, while almost 3 in 10 (28%) had been arrested five or more times prior to the alleged DWI offense. Among all first-time DWI offenders, more than one quarter (27%) were arrested on more than one prior occasion and 12 percent had been arrested five previous times.

The number of prior arrests was greater for those with some of the more common offenses listed above. For example, among first-time DWI offenders with prior drug offenses, 84 percent had more than one total previous arrest (for both drug and non-drug offenses), as did 83 percent of those arrested for assault or theft.

### Arrest Timelines

Time Between First DWI Arrest And Most Recent Prior Arrest		
Time Since Most Recent Arrest	#	% of Those w/ Prior
6 months or less	11,866	20.4%
< 1 year	6,978	12.0%
< 2 years	9,390	16.1%
< 3 years	6,075	10.4%
< 4 years	4,648	8.0%
< 6 years	6,308	10.8%
6 thru 10 years	7,895	13.6%
11 thru 20 years	4,431	7.6%
> 20 years	597	1.0%
Total	58,190	100.0%

First-time DWI offenders with prior offense histories often had contact with law enforcement just months before the DWI arrest. Among first-time DWI arrestees, almost one-third (32%) were arrested less than a year before the DWI offense. In fact, 20 percent had been arrested within six months of the alleged DWI. In all, approximately half of first-time DWI offenders with prior arrest histories had been arrested less than two years before the DWI. Among those with a longer duration between their most recent arrest prior to the DWI, more than one in five (22%) had not been arrested for six or more years. This includes 9 percent who had not been arrested for more than 10 years prior to the DWI. On average, first-time DWI offenders with prior offense histories in California were last arrested just under four years before being arrested for DWI.

### Demographics

Nearly half (47%) of all first-time DWI offenders in California were under 30 years of age, including 8 percent who were under 21 at the time of arrest. An additional 24 percent were in their 30s at the time of their first DWI arrests, while 15 percent were in their 40s. Just 9 percent of first-time DWI offenders were 50 or older at the time of their DWI arrests.

Prior Arrest History by Demographic Category		
Demographics	Prior Arrest	No Prior Arrest
<i>Gender</i>		
Male	43.8%	56.2%
Female	33.1%	66.9%
Total	58,190	80,394

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Not only were first-time DWI offenders disproportionately male, but male offenders were significantly more likely to have prior offenses than females. More than 4 in 10 (44%) males had been arrested prior to the DWI offense, compared with 33 percent of females.

### *Data*

The California dataset provides detailed offense histories for all first-time DWI arrestees, including traffic arrests. Each event includes not only the lead charge, but multiple offenses when appropriate. The dataset also contains demographic information for each of the 138,854 first-time DWI offenders. All California DWI arrests during this timeframe are included in the dataset, regardless of subsequent legal expungement or sealing of individual records.

As with all of the State-level data analyzed for this project, the data are exclusive to California arrests. Any prior arrests – either for DWI or any other offense – in States other than California are not reported in the data.

## FLORIDA

In 2000, there were 63,724 arrests for DWI in Florida. Of those arrested, 50,393, or 80 percent of those arrested, were considered first-time DWI offenders.<sup>29</sup> This analysis examines all people arrested for DWI for the first-time in Florida in 2005 and 2006, totaling 95,207 people.<sup>30</sup> Although these people experienced their first DWI arrests during this timeframe, a large minority of these arrestees were not strangers to the Sunshine State's law enforcement community. Fully 44 percent (n = 41,623) of first-time DWI arrestees had prior arrests in Florida, including 14 percent who had been arrested on five or more different occasions. The data suggests that there are common prior offenses among this group, as past arrests for assault, drug, traffic,<sup>31</sup> and theft offenses were familiar to significant numbers of first-time DWI offenders.

### Offense History

Selected Prior Offenses for First-Time DWI Offenders			
Offense	#	% of All w/ 1st DWI	% of Those w/ Prior non-DWIs
Assault/Battery	16,407	17.2%	39.4%
Drug Offense	16,330	17.2%	39.2%
Theft/Larceny	13,671	14.4%	32.8%
Traffic Offense	11,689	12.3%	28.1%
Probation Violation	10,937	11.5%	26.3%
Resisting Arrest	9,469	9.9%	22.7%
Burglary	7,491	7.9%	18.0%
Public Order	7,279	7.6%	17.5%
Fraud	4,542	4.8%	10.9%
Weapons Violation	3,731	3.9%	9.0%
Destruction of Property	3,152	3.3%	7.6%
Robbery	2,401	2.5%	5.8%
Sex Offense	855	0.9%	2.1%
Drunkenness	50	0.1%	0.1%
Total w/ Prior Arrest	41,623	43.7%	100.0%
Total 1st Time DWI	95,207	100.0%	n/a

Of the 95,207 people arrested for DWI in Florida for the first-time during 2005 and 2006, 41,623 or 44 percent, had previously been arrested in the State for other crimes. While these offenses ranged from gambling and prostitution to robbery and murder, some crimes were much more prevalent than others. More than 17 percent of first-time DWI offenders were previously arrested for assault or battery, which totals 39 percent of all those with a prior arrest. Similarly, 17 percent of first-time DWI offenders had a prior drug arrest; most of these arrests were for drug possession rather than distribution. Another 14 percent of first-time DWI offenders were previously arrested for theft or larceny, while 8 percent had a prior burglary arrest. An additional 12 percent had prior arrests for traffic offenses, while 12 percent also had been previously arrested for probation violations. Others had criminal histories for resisting arrest (10%) and public order offenses (8%).

By contrast, far fewer first-time DWI offenders had been previously arrested for other person and property offenses. Although assault was the most common prior offense, just 4 percent had prior arrests for weapons violations and even fewer (3%) had been arrested for robbery. Fewer still (<1%) had previously been arrested for sex offenses or public drunkenness.

<sup>29</sup> The Century Council (2007)

<sup>30</sup> Florida Statute FL316.193 and its subsections define the State's Driving Under the Influence law. This law incorporates operating a motor vehicle under the influence of alcohol or drugs.

<sup>31</sup> Traffic offenses included in this data set are limited to criminal traffic offenses.

A large majority of first-time DWI offenders with prior arrests in Florida had more than one previous law enforcement contact. Among those with prior offense histories, two-thirds (65%) had been arrested on two or more occasions, and nearly one in three (31%) had five or more arrests prior to the arrest for DWI. Among those arrested for a first-time DWI, 29 percent had two or more prior arrests and 14 percent had five or more previous arrests.

<b>Number of Prior Arrests for First-Time DWI Offenders</b>			
Total Number of Prior Arrests	#	% of All w/ 1st DWI	% of Those w/ Prior
0	53,584	56.3%	n/a
1	14,524	15.3%	34.9%
2	6,975	7.3%	16.8%
3	4,264	4.5%	10.2%
4	2,840	3.0%	6.8%
5	2,088	2.2%	5.0%
6-10	5,959	6.3%	14.3%
More than 10	4,973	5.2%	11.9%
Total w/ Prior Arrest	41,623	43.7%	100.0%
Total 1st Time DWI	95,207	100.0%	n/a

The number of prior arrests was greater for those with the more common offenses. For example, among first-time DWI offenders with a prior drug offense, 85 percent had more than one total previous arrest (for both drug and non-drug offenses), as did 81 percent of those arrested for assault and 87 percent of those arrested for theft.

Those previously arrested for drug offenses, assault, and theft not only were more likely than others to have multiple arrests, but were frequently repeat offenders for the same offenses on multiple occasions. For example, among those with a prior drug offense, nearly half (44%) had been arrested more than once for possession or distribution of drugs. Similarly, 39 percent of those arrested for assault or battery were recidivists for that type of offense, while the same was true for 33 percent of those arrested for theft.

## Arrest Timelines

<b>Time Between First DWI Arrest and Most Recent Prior Arrest</b>		
Time Since Most Recent Arrest	#	% of Those w/ Prior
6 months or less	9,408	22.6%
< 1 year	5,242	12.6%
< 2 years	6,486	15.6%
< 3 years	4,305	10.3%
< 6 years	7,290	17.5%
6 thru 10 years	5,023	12.1%
11 thru 20 years	2,854	6.9%
> 20 years	1,015	2.4%
Total	41,623	100.0%

Among the first-time DWI offenders with prior arrest histories, there is considerable variation in the amount of time since their prior Florida arrests. Approximately half (51%) were most recently arrested within two years of their DWI arrest. Moreover, more than a third (35%) had been arrested within a year of the DWI arrest, and nearly a quarter (23%) had been arrested in the six months prior to the DWI offense. However, more than one in five (21%) had not been arrested for six or more years prior to the DWI arrest.



While a majority were most recently arrested less than two years prior to their first DWI offense, most of those with prior offenses were *first* arrested in Florida long before being arrested for impaired driving. More than half (52%) of first-time DWI offenders with priors were first arrested six or more years before the DWI arrest. In fact, one in four (26%) experienced their first arrest more than 10 years prior to the DWI. The mean amount of time between the first arrest in Florida and the 2005 or 2006 arrest for DWI was eight years and five months.

## Data

The data used in this analysis is very detailed with respect to offense history, providing the full listing of crimes which people were alleged to have perpetrated, and not simply the lead offense. However, the Florida dataset contains no demographic information on the 95,207 people included in this analysis. Hence, we were unable to examine differences among first-time DWI offenders by gender, race, ethnicity, age, or county and city of residence. An analysis of these additional variables with offense histories would have provided valuable insight into whether the common prior offenses identified in this report were more familiar among specific demographic groups.

All Florida DWI arrests during this timeframe are included in the dataset, regardless of subsequent legal expungement or sealing of individual records.

As with all of the State-level data analyzed for this project, the data is exclusive to Florida arrests. Any prior arrests – either for DWI or any other offense – in States other than Florida are not reported in the data.

## NEW YORK

In 2005, there were 51,016 arrests for DWI in New York, according to data published by the New York Division of Criminal Justice Services (DCJS).<sup>32</sup> Data provided by DCJS for the purposes of this analysis include 36,970 individual drivers arrested for DWI in New York for the first-time, approximately 72 percent of all New York's DWI arrests that year.<sup>33</sup> More than one in four (n = 9,862) first-time DWI arrestees had prior arrests within New York, including 17 percent who had more than one prior arrest.<sup>34</sup> These numbers do not include any traffic offenses, as these offenses were not included in the data analysis. The data suggest that there are common prior offenses among this group, as past arrests for assault, drug, and theft offenses were familiar to significant numbers of first-time DWI offenders.

### Offense History

Selected Prior Offenses for First-Time DWI Offenders			
Offense	#	% of All w/ 1st DWI	% of Those w/ Prior non-DWIs
Assault	4,580	12.4%	46.4%
Theft/Larceny	4,227	11.4%	42.9%
Drugs	4,159	11.2%	42.2%
Disorderly Conduct	3,536	9.6%	35.9%
Criminal Mischief	2,485	6.7%	25.2%
Dangerous Weapons	1,825	4.9%	18.5%
Burglary	1,533	4.1%	15.5%
Sex Offense	1,439	3.9%	14.6%
Fraud	1,317	3.6%	13.4%
Robbery	985	2.7%	10.0%
Forgery	742	2.0%	7.5%
Total w/ Prior Arrest	9,862	26.7%	100.0%
Total 1st Time DWI	36,970	100.0%	n/a

Of the 36,970 people arrested for DWI or DWAI for the first-time in New York, 9,862 (27 percent) had previously been arrested in the Empire State for other crimes. While there was a wide array of criminal acts for which first-time DWI offenders had been arrested, some were especially prevalent among this population. More than 12 percent of first-time DWI offenders were previously arrested for assault. This totals nearly half (46%) of all first-time DWI arrestees with prior offenses. Similarly, 11 percent had a prior theft arrest, and another 11 percent a prior drug arrest, which represent large pluralities of the first-time DWI offender population (43% and 42% respectively). In all, 23 percent of those arrested for DWI for the first-time had prior assault, theft, or drug arrests. This accounts for an astonishing 85 percent of all first-time DWI offenders with prior arrest records in New York.

In addition to assault, theft, and drug offenses, significant numbers of first-time DWI offenders had prior arrests for certain public order crimes. Ten percent had a prior arrest in New York for disorderly conduct, 7 percent for criminal mischief and 5 percent for weapons violations. Fewer first-time DWI offenders had prior arrests for burglary (4%), sex offenses (4%), fraud (4%), and robbery (3%).

<sup>32</sup> New York Division of Criminal Justice Services (2007).

<sup>33</sup> For the purposes of this report, the 36,970 people arrested for DWI for the first-time in New York are deemed "first-time" DWI offenders. Those who were not arrested in New York prior to the first DWI arrest are considered to have no prior offenses, even though they may have been arrested in another State. These terms are used only for simplification purposes in the report.

<sup>34</sup> The New York dataset does not include non-DWI traffic offenses. This is likely the reason New York findings of prior arrest histories are lower than California and Florida.

Number of Prior Arrests for First-Time DWI Offenders			
Total Number of Prior Arrests	#	% of All w/ 1st DWI	% of Those w/ Prior
0	27,082	73.3%	-
1	3,722	10.1%	37.6%
2	1,869	5.1%	18.9%
3-4	1,811	4.9%	18.4%
5-8	1,369	3.7%	13.8%
9 or more	1,117	3.0%	11.3%
Total w/ Prior Arrest	9,862	26.7%	100.0%
Total 1st Time DWI	36,970	100.0%	n/a

First-time DWI offenders with prior arrests in New York often had extensive criminal histories, as nearly half (43%) had been arrested three or more times before being arrested for impaired driving. Among those with prior offenses, just 38 percent had been arrested only once prior to the DWI offense, while 19 percent had two previous arrests. Another 18 percent had three or four prior arrests, while 14 percent were arrested between five and eight times prior to the DWI offense. More than one in 10 (11%) had been arrested nine or more times before their first DWI offense. The mean number of prior arrests for first-time DWI offenders was 3.9, while the median was two.

The number of prior arrests was typically greater for those with some of the more common offenses listed above. Among drug offenders, 75 percent had more than one total prior arrest (for both drug and non-drug offenses), and half (48%) had four or more arrests. Those with prior assault offenses were even more likely to have two or more prior arrests (82%), while more than half (52%) had been arrested four or more times. Similarly, fully 83 percent of first-time DWI offenders with a history of theft offenses had more than one prior arrest, while 53 percent had previously been arrested four or more times.

## Arrest Timelines

Time Between First DWI Arrest and Most Recent Prior Arrest		
Time Since Most Recent Arrest	% of Those w/ Prior	Cumulative % <sup>1</sup>
3 months or less	10.1%	10.1%
6 months or less	7.7%	17.7%
< 1 year	10.7%	28.5%
< 2 years	15.1%	43.6%
< 3 years	16.6%	60.2%
< 5 years	7.4%	67.6%
<10 years	15.5%	83.0%
< 20 years	9.9%	93.0%
20 years or more	7.0%	100.0%
Total	9,862	100.0%

First-time DWI offenders with prior arrest histories varied a great deal with respect to the date of their most recent contact with New York law enforcement authorities. Almost 3 in 10 (29%) were most recently arrested within a year of the DWI offense. This includes 10 percent whose most recent arrest was three months or less before the DWI, and 8 percent who were arrested between three and six months prior to the DWI. Another 15 percent were arrested between 1 and 2 years before their first DWI offense, while 17 percent had most recently been arrested between two and three years prior to the DWI. In all, two-thirds (68%) with prior offenses had most recently been arrested within 5 years of arrest, while 83 percent had most recently been arrested within 10 years. Nearly one in five (17%) had not been arrested for more than 10 years, including 7

percent whose most recent arrest was 20 years or more before their first arrest for DWI. The median amount of time between the DWI offense and the most recent prior arrest is slightly more than two and a half years.<sup>35</sup>

## Demographics

First-time DWI offenders in New York were disproportionately white and male, and usually under 40 years old. Among those arrested for DWI for the first-time, four out of five (80%) were male. Fully half (53%) of all first-time DWI offenders in New York were under 30, including 13 percent who were under 21 at the time of arrest. An additional 22 percent were in their 30s at the time of their first DWI arrest, while 16 percent were in their 40s. Less than 1 in 10 (9%) first-time DWI offenders were 50 or older at the time of arrest.

Prior Arrest History by Demographic Category		
Demographics	Prior Arrest	No Prior Arrest
<i>Gender</i>		
Male	29.1%	70.9%
Female	16.2%	83.8%
Total	9,862	27,108

Male first-time DWI offenders were far more likely to have a prior arrest than females. Three in 10 (29%) had been arrested before the DWI offense, compared with 16 percent of females. Similarly, men were more than twice as likely as women to have more than one prior arrest (19% versus 8%).

## Data

The dataset used for this analysis was rich with demographic information and a full arrest history for non-traffic offenses. Perhaps the biggest limitation of the data is that prior traffic offense history was not included. Similar analyses of first-time DUI offenders in Florida, California and Alabama found that traffic offenses were some of the most common crimes for which people had previously been arrested.<sup>36</sup>

Another limitation is that 13 percent of first-time DWI offenders had a prior arrest for offenses that were only coded as “Other” or “Other Finger-Printable Offenses.” The “other” totals are somewhat larger than preferred for this type of analysis, especially since the main concern is the specific criminal violations in one’s prior offense history.

All New York DWI arrests during this timeframe are included in the dataset, regardless of subsequent legal expungement or sealing of individual records.

As with all of the State-level data analyzed for this project, the data is exclusive to New York arrests. Any prior arrests – either for DWI or any other offense – in States other than New York are not reported in the data.

<sup>35</sup> The median is a more appropriate measure of central tendency than the mean for this report; we are more interested in the “typical” amount of time between prior and DWI arrest than an average. The mean ( $\approx 5.5$  years) is inflated by the significant number of those whose most recent arrest was 20 or more years prior to the DWI.

<sup>36</sup> Twelve percent of first-time DWI offenders in Florida had prior traffic offenses, and 8.5% in California.

## CHAPTER FIVE: IDENTIFICATION OF PROGRAMS AND STRATEGIES

The second objective of the Preventing First-time DWI Offenses project is to “identify strategies that are used to address the common and perpetuating offenses [of first-time DWI] to determine if there are potential opportunities to expand those efforts to prevent drinking and driving.” Research estimates suggest that there are approximately 1 million arrests each year of drivers charged for the first-time with impaired driving. Among these offenders it is likely that between 260,000 to 440,000 of them have been involved with the justice system prior to the impaired driving arrest. Research findings in California, Florida, and New York suggest that the four most common prior offenses among first-time DWI offenders are *drug offenses, assault offenses, theft/larceny offenses and traffic offenses*. Estimates suggest that approximately 200,000 to 375,000 offenders each year with arrest records for drug, assault, theft, or traffic offenses continue on to commit a first-time DWI offense.

In an effort to identify potential points for early impaired driving prevention efforts, the response of the criminal justice system towards offenders presenting with these four prior offense types was examined, including initial processing activities, sentencing patterns, corrections processes, and programs serving these arrestees. This chapter describes the adult criminal justice system’s structure and the processes in which these offenders are generally sentenced and supervised, identifies general sentencing patterns for each type of offense, and describes the supervision, programming, or services these convicted offenders generally receive. Information regarding relevant activities of State motor vehicle agencies is also included.

### Overview of Criminal Justice Processes

The context of criminal justice interventions and corrections programming is important when discussing and developing potential interventions. The criminal justice system involves various components, from law enforcement to community supervision. Appendix E provides a detailed description of the entire criminal justice process. For the purposes of this project a specific focus on pretrial services, conviction, sentencing and corrections is required.

Pretrial services occur at the outset of the criminal justice process, immediately following the arrest of an individual, and are performed to support and inform the court. Pretrial services may be performed by court staff, probation staff, private contractors, or law enforcement personnel; responsibility for this function varies across jurisdictions. Pretrial services include offender background investigations, to provide information to the court regarding an individual’s potential for flight or risk to the community while awaiting trial or sentencing, as well as drug testing, electronic monitoring, and pretrial supervision in an effort to monitor a released individual’s community status while awaiting hearings. A pretrial investigation often includes the gathering of information pertaining to the defendant’s residence, employment status, ties to the community, criminal record, mental health status, and any indication of substance abuse.<sup>37</sup>

While an individual awaits court hearings he or she may be incarcerated in the local jail, released under supervision with conditions of release, or released on one’s own recognizance. The services or supervision a defendant receives during this period is unlikely to address the specifics of the presenting offense, although treatment may be initialized if deemed appropriate by pretrial and/or jail staff. Pretrial programs, in the community and the jail, serving assault, drug, theft and traffic offenders that may provide an opportunity for DWI prevention efforts are included in the Programs and Strategies Section below.

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<sup>37</sup> J. Clark & A.D. Henry. (2003)

Following arrest, the court generally proceeds with hearings to determine the individual's guilt or innocence. Upon conviction, an individual is sentenced according to the level of severity of his/her offense. Standard criminal offense sentences may involve incarceration (in prison or jail), probation (community supervision), restitution, treatment and/or fines. Although procedures vary from State to State, most offenders sentenced to incarceration for less than one year are held in the local jail, typically operated by the local jurisdiction. Those sentenced to more than one year are usually transferred to a State prison, operated by State Department of Corrections.<sup>38</sup> Offenders sentenced to probation are typically supervised by staff employed by the State's Department of Corrections or the local municipality.<sup>39</sup> Probation requirements may be as minimal as one monthly office visit, or as intensive as mandated participation in a day reporting program. Alternative sentencing options may be used; such options include boot camps, halfway houses, and specialized treatment programs.<sup>40</sup> In this manner, the responsibility of implementing an offender's sentence may be the responsibility of a local or State entity. Federal offenders are supervised by the Federal Government.

Upon conviction or sentencing, the responsible corrections agency generally uses a risk assessment process to identify the required supervision level and treatment needs of the offender. Based on the outcome of this risk assessment process, the offender is placed in the appropriate level of supervision and referred to relevant and available treatment programming. Incarcerated offenders generally move to community-based parole prior to the termination of corrections supervision. As these prisoners re-enter the community, local or State community corrections agencies are responsible for ensuring that appropriate supervision and treatment continues at the community level. Corrections programming and processes serving incarcerated or community-based assault, drug, theft and traffic offenders that may provide opportunities for DWI prevention efforts are included in the Programs and Strategies section below.

## Conviction Rates and Sentences: Assault, Drug, Theft and Traffic Offenders

The data analysis component of this project focused exclusively on arrest data. While some programs and strategies are provided to all arrestees, more extensive programming and services are generally provided to convicted offenders. This section of the report provides information regarding conviction rates and average sentences for assault, drug, theft and traffic offenders.

### Assault Offenders

This offense category includes offenders with simple assault charges, as well as domestic assault, aggravated assault, assault and battery, and aggravated battery. Approximately 55 percent of all defendants arrested for felony assault charges are convicted.<sup>41</sup>

Upon conviction, the majority of felony assault offenders are sentenced to community supervision and/or short local jail stays; in large county and State courts approximately 40 percent are sentenced to prison while 60 percent are sentenced to jail and/or probation.<sup>42</sup> Those sentenced to prison are sentenced to an average of 48 months<sup>43</sup> but generally serve an average of 20 months.<sup>44</sup> Probation sentences average 39 months.<sup>45</sup>

<sup>38</sup> Bureau of Justice Statistics (2007). *The Justice System*.

<sup>39</sup> Bureau of Labor Statistics (2007).

<sup>40</sup> Bureau of Justice Statistics (2007). *The Justice System*.

<sup>41</sup> Bureau of Justice Statistics (2007) *Sourcebook of Criminal Justice Statistics, 31st Edition*.

<sup>42</sup> Ibid.

<sup>43</sup> Ibid.

<sup>44</sup> Bureau of Justice Statistics (2007) *Probation and Parole Statistics*.

<sup>45</sup> M. Durose and P. Langan. (2004).

In addition to prison, jail or probation, 32 percent of all felony aggravated assault convicts were sentenced to pay a fine, 15 percent were ordered to pay restitution, 7 percent were ordered to treatment and 8 percent were required to complete community service.<sup>46</sup> Although the percentage of offenders ordered to treatment appears low, it is likely that a much higher percentage actually participate in treatment or programs. In many cases, a court sentence may include a general requirement to complete all services as directed by the responsible supervising entity, while not identifying a specific treatment in the official court order. In this manner, although not specifically mandated in their court sentence, assault offenders may be referred to anger management programs or batterers programs, if applicable, as a direct result of this presenting offense. They may also be referred to other treatment programs based on risks identified in a risk assessment process.<sup>47</sup> It should be noted that misdemeanor offenders are generally sentenced more leniently than felons, as misdemeanor offenses are less serious than felonies.



### **Drug Offenders**

Drug offenders include offenders with any presenting drug offenses, misdemeanor or felony, including drug possession, sales, distribution, and trafficking charges. The most common of these offenses is drug possession. Approximately 69 percent of all defendants arrested for felony drug offenses are convicted.<sup>48</sup>

The majority of felony drug offenders are sentenced to community supervision and/or short local jail stays. In large county and State courts, approximately 40 percent of drug offenders are sentenced to prison while the remaining 60 percent are sentenced to community supervision and/or local jail.<sup>49</sup> While the typical prison sentence for drug offenders averages approximately 30 months,<sup>50</sup> drug offenders actually serve an average of 15 months in prison.<sup>51</sup> Community supervision sentences average three years.<sup>52</sup> In addition, approximately 37 percent of all felony drug convicts were required to pay a fine; 13 percent were ordered to pay restitution, 11 percent were ordered to complete community service, and 11 percent were directly ordered to complete a treatment program.<sup>53</sup> Although not specifically mandated in their court sentence, many drug offenders are referred to substance abuse treatment as a component of their supervision or incarceration.<sup>54</sup> Misdemeanor offenses are less serious than felonies; misdemeanor offenders are generally sentenced more leniently than felons.

It should be noted that many jurisdictions have implemented drug courts, which are specialized courts designed to hear only cases involving substance abusing offenders. Typical drug courts involve the various components of the criminal justice system working closely together and exclusively with this population to ensure a coordinated treatment and supervision effort. This concept is further discussed in the Corrections section of this chapter.

<sup>46</sup> Bureau of Justice Statistics (2007) *Sourcebook of Criminal Justice Statistics, 31st Edition*.

<sup>47</sup> D. French (2007).

<sup>48</sup> Bureau of Justice Statistics (2007). *Sourcebook of Criminal Justice Statistics, 31st Edition*.

<sup>49</sup> Ibid.

<sup>50</sup> Ibid.

<sup>51</sup> Bureau of Justice Statistics (2007). *Probation and Parole Statistics*.

<sup>52</sup> Durose and Langan (2004) 3.

<sup>53</sup> Bureau of Justice Statistics (2007) *Sourcebook of Criminal Justice Statistics, 31st Edition*.

<sup>54</sup> French (2007).

## Theft/Larceny Offenders

This offense category includes all larceny and vehicle theft offenses, including misdemeanor and felony charges of shoplifting, larceny, larceny from auto, pick-pocketing, unauthorized use of a vehicle and vehicle theft. Approximately 69 percent of all defendants arrested for felony theft or larceny charges are convicted.<sup>55</sup>

The majority of felony larceny offenders are sentenced to community supervision and/or short local jail stays; in large county and State courts approximately 35 percent are sentenced to prison while 65 percent are sentenced to jail and/or probation.<sup>56</sup> Those sentenced to prison are typically sentenced to approximately 24 months,<sup>57</sup> but generally only serve an average of 12 months.<sup>58</sup> Probation sentences average three years.<sup>59</sup> In addition, approximately 26 percent of felony larceny convicts are sentenced to pay restitution, 30 percent are fined, and 11 percent are required to complete community service.<sup>60</sup> Research suggests that very few offender-focused programs are regularly used to address specific theft or larceny behavior. These offenders may be placed in other treatment programs as indicated by risk assessment findings, or may be supervised under standard probation services only. Misdemeanor offenses are less serious than felonies; misdemeanor offenders are generally sentenced more leniently than felons.

## Traffic Offenders

This offense category includes all criminal traffic offenses and non-criminal traffic violations, excluding DWI related offenses. Offenses in this category include moving and non-moving offenses, including hit-and-run, reckless driving, speeding, driving while suspended, driving without a license, driving with expired tags and unlawful use of a driver's license.

The majority of the offenses in this category are misdemeanor offenses or non-criminal traffic infractions.<sup>61</sup> Because of the variation in data collection and data storage practices in the Florida and California criminal history datasets, the identification of the most common offenses among those with traffic-related arrests in both States was not feasible.

Unfortunately, data is not available regarding typical conviction rates of non-DWI traffic offenses.

Traffic violations can be punishable with a variety of penalties, including incarceration, fines, driver's license restrictions and mandated traffic classes. The National Center for State Courts advises it is unaware of any research-based analysis that identifies "typical" sentences for traffic offenses such as reckless driving. Anecdotal evidence suggests that typical sentences involve fines, as well as license restrictions.<sup>62</sup> For example, the range of sentencing options for speeding violations may include jail time up to 12 months, fines from \$1 to \$1,000 and license suspension from 2 days to 2 years.<sup>63</sup>

Traffic offenders also face repercussions affecting their driver's licenses; in addition to court-imposed sanctions, the State department responsible for licensing drivers (commonly the Department of Motor Vehicles [DMV]) imposes consequences for traffic infractions. The State DMV may mandate the completion of traffic school as a result of points on a driver's license related to the traffic infraction, regardless of court imposed

<sup>55</sup> Bureau of Justice Statistics (2007) *Sourcebook of Criminal Justice Statistics, 31st Edition*.

<sup>56</sup> Ibid.

<sup>57</sup> Ibid.

<sup>58</sup> Bureau of Justice Statistics (2007) *Probation and Parole Statistics*.

<sup>59</sup> Durose and Langan (2004) 3.

<sup>60</sup> Bureau of Justice Statistics. *Sourcebook of Criminal Justice Statistics, 31st Edition*.

<sup>61</sup> NHTSA (2007) *Summary of State Speed Laws, 10th Edition*.

<sup>62</sup> G. Hurley (2007).

<sup>63</sup> National Highway Traffic Safety Administration (2001).



findings and sanctions. Even without a mandate to complete such a program, some traffic offenders may opt to participate in these programs in order to remove points from their license.<sup>64</sup> Statistics regarding the numbers of drivers attending traffic school programs are unavailable.<sup>65</sup>

**Table 1: Common Offenses: Conviction Rates and Average Sentences<sup>66</sup>**

	Offense			
	Assault	Drug	Theft/Larceny	Traffic
Conviction Rate	55%	69%	69%	n/a
Sentenced to Prison	40%	40%	35%	n/a
Sentence	48 months	30 months	24 months	n/a
Time Served	20 months	15 months	12 months	n/a
Sentenced to Jail/Probation	60%	60%	65%	n/a
Probation Sentence	39 months	3 years	3 years	n/a
Ordered to Pay Fine	32%	37%	30%	n/a
Ordered to Pay Restitution	15%	13%	26%	n/a
Ordered to Community Service	8%	11%	11%	n/a
Ordered to Treatment Program	7%	11%	9%	n/a

## Corrections: Risk Assessment and Program Referral Process

Once people are convicted and sentenced, the criminal justice system shifts its focus from the presenting offense to the offender’s supervision and treatment requirements.<sup>67</sup> While the presenting offense is the immediate reason for the offender’s involvement in the system, a more holistic approach is typically used to supervise and treat offenders. The corrections system is responsible for imposing the court-ordered sentence, while directing efforts to rehabilitate the offender in an attempt to prevent recidivism. A court-imposed sentence may be determinate or indeterminate. Determinate sentences specify not only the specific type of supervision, if applicable (incarceration or probation), but also the specific period of supervision. Indeterminate sentences specify the type of supervision but place only a maximum period of supervision, with discretion permitted to the responsible supervising agency regarding early release or parole.<sup>68</sup> Discretion regarding the treatment of the offender is also generally left to the responsible corrections agency.

The vast majority of State and local corrections agencies use a standardized risk assessment<sup>69</sup> instrument or process to identify risk factors<sup>70</sup> and needs that offenders may benefit from addressing; tools for community-based and secure facility placements are distinct, yet capture similar information regarding the offender’s prior arrest record, presenting offense, education level, mental health, substance use and family background. Standardized tools are used during the early phases of the corrections process and assist the corrections staff in identifying the most appropriate facility placement or level of community supervision, as well as treatment programs from which the offender may benefit. Standardized tools may also be used upon an incarcerated offender’s re-entry into the community, or release from jail/prison to the community. In such cases the risk assessment process would identify the level of community supervision and types of treatment services

<sup>64</sup> Hurley (2007).

<sup>65</sup> Ibid.

<sup>66</sup> Misdemeanor conviction rates and sentencing patterns unavailable.

<sup>67</sup> This is the case for offenders sentenced to probation or incarceration, requiring ongoing involvement with the corrections system. Offenders sentenced exclusively to pay a fine or submit to driving restrictions are not involved with the corrections system.

<sup>68</sup> D. Farrington, P. Langan, & M. Tonry (2004) 40.

<sup>69</sup> Also called a needs assessment.

<sup>70</sup> A risk factor in the criminal justice field is defined as an experience, life event, circumstance, or personality trait that is associated with an increase in problem behavior or antisocial activity.



that would best protect the community and support the offender's successful re-entry. Tools and processes used at all levels of supervision are typically developed and/or tailored to meet the specific needs of the local or State corrections agency and should be validated on the offender population of that agency.

mental tool may be developed or used to more narrowly identify potential candidates for various DWI prevention or intervention efforts.

These risk assessment processes used both in prisons and the community may facilitate the identification of characteristics among assault, drug, theft and traffic offenders that increase an individual's risk for subsequent DWI behavior. Once these people are identified, a supple-

### ***Prisoner Classification***

The risk assessment process used in secure facilities is generally referred to as prisoner classification. The primary purpose of the prisoner classification process is to facilitate a facility placement decision that incorporates the required level of security while providing for the offender's identified treatment needs. Many prisons use a prisoner classification process that has been developed or tailored and validated specifically for their facility and inmate population. However, the common offender data collected is consistent across the country. Typical information gathered, quantified and analyzed during this process includes: presenting charges, prior juvenile and criminal record, prior classification records, active warrants, escape history, age, education level, employment history, residency, and special medical and mental health needs.<sup>71</sup>

### ***Community Risk Assessment***

Offenders released to the community are generally placed on conditions of probation, which identify specific requirements with which an offender must comply in order to remain at liberty. The primary purpose of a community risk assessment is to determine the level of community supervision each offender requires. Findings from the risk assessment are also used to place the offender in appropriate treatment programs in an effort to support the offender's successful completion of his/her period of probation. While the prison systems generally use more unique classification processes, community risk assessment tools are more standardized across the country. Popular tools include the CMC (Client Management Classification), the LSI-R (Level of Service Inventory-Revised) and the Wisconsin Risk and Needs Assessment.<sup>72</sup> These tools collect, quantify, and analyze offender information similar to that collected in the prisoner classification process. Information collected includes: criminal history, education, substance abuse, interpersonal skills, social supports, vocational aptitude, violence risk, and self-esteem.<sup>73</sup>

### ***Program Referral Process***

Offenders in the corrections system are directed to participate in programs based on their presenting risks and needs, as identified by a risk assessment, not exclusively based on their presenting offense. While some programs may be developed to specifically address one type of offense, offenders whose risk assessment results indicate a need for such programming may be referred to that program without an official charge. A prime example of this would be substance abuse treatment, which is provided to all types of criminal offenders, not exclusively drug offenders. Conversely, it is less likely that offenders would be referred to a batterers program for domestic violence perpetrators, without a formal charge of domestic assault. In addition,

<sup>71</sup> J. Austin & P. Hardyman (2004) 21.

<sup>72</sup> S. Street (2004) 27-28.

<sup>73</sup> Street 28-30.

offenders are placed in programs according to program availability. For example, although an offender's risk assessment may indicate a need for inpatient substance abuse treatment, the offender may be placed in a less intensive treatment option if space is not available due to limited resources.

It should be noted that people may be referred to more than one program simultaneously, or consecutively. Whether incarcerated or in the community, many offenders present with multiple needs. It is generally the responsibility of the corrections staff to ensure that a treatment plan is developed for each offender that meets his/her needs, and that critical information regarding the needs and treatment progress of each individual is documented and shared with treatment providers, as appropriate.

In most cases, program referral and participation statistics are not tracked by offense. Program statistics commonly maintained include race, age, gender, and number of prior offenses. However, certain programs tend to focus on certain types of offenders. For example, in Florida the vast majority of drug offenders are placed in substance abuse treatment programs, despite the fact that many other types of offenders may also be placed in these programs. Offenders convicted of assault are often referred to anger management or batterers programs.<sup>74</sup>

## Programs and Strategies

Although criminal justice agencies do not typically maintain data that track program participants by their presenting offense, certain generalizations regarding the types of programs certain offenders are commonly referred to can be made. The programs listed below include pretrial programs, corrections programs, and DMV programs that provide counseling, treatment or education to offenders with presenting assault, drug, theft, or traffic offenses, and have the potential for expansion to include DWI prevention education activities. These programs (or program placement processes) use a screening or risk assessment process that provides information regarding characteristics that correlate with DWI behavior, or have been evaluated as successful at reducing overall recidivism among its participants. In some cases both of these criteria are met.

### Pretrial Programs

Information gathered by pretrial services agencies during pretrial investigations and defendant supervision may be useful in identifying assault, drug, theft or traffic offenders with characteristics that correlate with subsequent DWI arrests. Approximately 68 percent of all pretrial service agencies drug test arrestees under supervision, 90 percent refer to substance abuse treatment as necessary, and 57 percent use alcohol testing routinely.<sup>75</sup> Some pretrial services agencies operate halfway houses (9%) or day-reporting centers (20%) for defendants pending hearings. Pretrial services also coordinate with local jails holding offenders pending hearings, referring defendants to available treatment services as available. In addition to information gathering and offender monitoring responsibilities, two more common specialized pretrial programs are detailed below.

#### Pretrial Diversion

Pretrial Diversion is a program offered in federal court, as well as some State and local jurisdictions, which permits an offender to voluntarily participate in identified supervision and treatment services as an alternative to prosecution for an offense for which they have been arrested. Pretrial diversion programs are typically operated by a pretrial services office, or a probation office. Qualified defendants are identified through a pretrial screening process and generally include first-time offenders with non-violent and less serious arrest charges. An offender who agrees to participate in a pretrial diversion program enters into a contract with the prosecuting attorney, agreeing to meet specified conditions, including supervision and treatment,

<sup>74</sup> French (2007).

<sup>75</sup> J. Clark & A. D. Henry (2003) 22.

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for a specified period of time. If the person successfully completes the pretrial diversion program, official charges are not filed. If at any time the arrestee fails to comply with the agreed upon conditions, the original arrest charge may be officially filed.

Federal court data indicate that approximately 25 percent of all pretrial diversion program participants are theft/larceny arrestees.<sup>76</sup> Federal pretrial diversion program participation averaged 12 months, and conditions or treatment required of diversion program participants included community service, restitution, or drug treatment.<sup>77</sup> While data suggests a very high rate of successful diversion program completion (85%), recidivism data regarding these arrestees were not available.<sup>78</sup>

### Pretrial Drug Treatment

Offenders facing drug charges, or whose pretrial screening indicates a substance abuse issue, are often referred to substance abuse treatment during the pretrial phase. These programs may be operated by the local jail, the pretrial services office, the public substance abuse department, or private providers. The quality and intensity of the treatment provided by these programs varies. In some cases the offender is released from jail on conditions requiring substance abuse treatment participation; in these cases the offender's treatment attendance is to be monitored and failure to comply results in a return to jail. However, in many cases offender monitoring is haphazard<sup>79</sup> or communication among criminal justice entities breaks down,<sup>80</sup> resulting in limited treatment involvement. Promising models of pretrial drug treatment have been documented in Washington, DC, and Birmingham, Alabama.<sup>81</sup>

## Corrections Programs

Although offenders are generally referred to treatment programs according to risk assessment outcomes rather than their presenting offense, the programs below are categorized according to the offenses identified during the data analysis process. Again, it should be noted that offenders may be referred to more than one program simultaneously, or consecutively.

### Assault Offenders

#### *Anger Management Programs*

Anger management programs may be provided to offenders in the community, in jail and in prison. These programs provide interventions for people who have encountered problems at work, home, school, or in the community as a result of their anger. Anger management programs provide education and behavior modification techniques in an attempt to teach participants how to better understand and manage their anger. Assault offenders in both community and incarcerated settings may be directed to participate in an anger management program as a component of their sentence or treatment. Programs range from an intensive one-day session to more-lengthy 10- to 16-week programs.

Anger management programs use three primary techniques to assist offenders to better recognize and manage their anger. These techniques are relaxation, cognitive therapy and skill development.<sup>82</sup> The *relaxation* technique involves training offenders to recognize a potentially angering situation and de-escalate their

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<sup>76</sup> T. Ulrich (2002) 5.

<sup>77</sup> Ulrich 7-8.

<sup>78</sup> Ulrich 8.

<sup>79</sup> T. Wolfe (1994).

<sup>80</sup> A. Harrell, O. Mitchell, A. Hirst, D. Marlowe, & J. Merrill.(2002).

<sup>81</sup> Ibid.

<sup>82</sup> J.D. Holloway (2003) 2.

emotions, through exercise, focusing on a calming thought,<sup>83</sup> or humor.<sup>84</sup> *Cognitive therapy* teaches offenders to “see alternative ways of thinking and reacting to anger.”<sup>85</sup> A therapist encourages an offender to interpret an angering situation from a more objective perspective, rather than a personal affront. Through role plays and repetition, the offender modifies his/her thinking patterns.<sup>86</sup> *Skill development* involves improving a participant’s skills specific to anger triggers. Improved skills can assist an offender in better managing his/her anger. For example, if an offender is easily angered by frustrating parenting experiences, better parenting skills may prevent the escalation of the angering situation. Improved conflict resolution skills will facilitate the offender’s control of confrontational situations.<sup>87</sup> Preliminary studies examining the effectiveness of anger management programs in the corrections environment indicate positive results.<sup>88</sup>

Anger management programs do not typically involve substance abuse treatment, although they may include discussions or education regarding the role alcohol and/or drugs may play in the escalation of feelings of anger. In many cases offenders may be simultaneously participating in a separate substance abuse treatment program. If an anger management counselor identifies an offender as potentially at risk for substance abuse issues, best practices recommend that the appropriate corrections and treatment staff be notified, and/or that a referral be made for a substance abuse assessment or treatment program.

### *Batterers Programs*

Most commonly used in community settings, batterers programs are also known as domestic violence intervention programs.<sup>89</sup> These programs typically provide educational and counseling services to men in a structured setting in order to teach them how to stop using controlling and abusive behavior in relationships with their intimate partners. Controlling and abusive behavior includes physical, emotional, financial and psychological abuse. A literature review reveals that batterers programs vary widely, ranging in length from two months to nine months, primarily comprised of weekly group counseling sessions with 5 to 10 participants. Some programs may also include an individual counseling component. Many States require batterers programs to meet specific requirements for State certification. These requirements usually address program content, number and length of sessions, facilitator/participant ratios, and facilitator training and experience.

The objectives of a typical batterers program are comparable to these used by a program in Massachusetts:

1. *Assisting the participant’s understanding of the reasons for his acts of violence by recognizing that his personal belief system justifies using violence as a means of controlling the victim’s actions;*
2. *Increasing the participant’s understanding of the cause of his violence by examining the cultural and social contexts in which he uses violence against his partners;*
3. *Increasing the participant’s willingness to change his actions by examining the negative effects of his behavior on his relationship, his partner, his friends and himself;*
4. *Providing the participant with practical information on how to change abusive behavior by exploring non-violent ways of relating to women; and*
5. *Encouraging the participant to become accountable to those he has hurt by encouraging him to accept responsibility for the impact his violence has had on his partner and others.*<sup>90</sup>

<sup>83</sup> Ibid.

<sup>84</sup> P. Hollenhorst (1998) 55.

<sup>85</sup> Holloway 2.

<sup>86</sup> Hollenhorst 55.

<sup>87</sup> Holloway 3.

<sup>88</sup> C. Dowden, K. Blanchette, & R. Serin (1999).

<sup>89</sup> Washington State Institute for Public Policy (2006) 14.

<sup>90</sup> Bay Cove Alcohol and Substance Abuse Program (2007) 1.

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Like anger management programs, batterers programs do not typically involve substance abuse treatment, although they may include discussions or education regarding the role alcohol and/or drugs may play in the batterer's patterns of abuse. A referral for an assessment or substance abuse treatment may be made by the batterers program staff as necessary.

Studies suggest that batterers programs do not demonstrate reductions in recidivism among participants.<sup>91</sup>

### Drug Offenders

Most offenders with drug charges are placed in substance abuse treatment programs. These programs, provided in both secure and nonsecure settings, include individual and group substance abuse counseling, therapeutic communities, and drug court programs.

### Drug Courts

A typical drug court program is based on a multi-pronged approach to rehabilitating substance abusing offenders that involves extensive monitoring through frequent court contacts, group substance abuse counseling, and drug testing.<sup>92</sup> While the treatment and supervision components are generally operated by the involved corrections agencies, the judiciary and prosecutor are typically more involved in the ongoing monitoring of the offender and oversight of treatment and supervision services than in nonspecialized courts. Drug courts seek to balance treatment and sanctions components to effectively reduce drug use and recidivism. Offenders participating in drug court programs may be incarcerated or released to the community; those incarcerated or those receiving treatment in a residential facility generally re-enter the community under strict supervision and are subsequently monitored in the community for a significant period of time. The treatment and supervision levels, as well as the types of offenders involved in drug court programs, vary widely. Typically only non-violent drug or alcohol using offenders with drug or alcohol related charges are eligible for drug court participation; DWI offenders are referred to drug courts in some jurisdictions.

Drug court programs have been evaluated and prove effective in reducing recidivism rates among offender populations.<sup>93</sup>

### Secure Residential (Therapeutic Communities)

Participants in a secure substance abuse treatment program either receive services in a specified unit within a State prison, or in a stand alone secure substance abuse treatment facility. In Florida, the average length of stay for successful residents of a secure substance abuse treatment program is approximately one year; the length of stay for unsuccessful participants is approximately 4 ½ months.<sup>94</sup>

Secure residential substance abuse services provided in a self-contained setting have been evaluated and proven effective in reducing recidivism rates among offender populations.<sup>95</sup>

### Substance Abuse Treatment (Secure)

Offenders in prison or jail participate regularly in a drug treatment program operated within the facility. Although not residing in a self-contained unit or facility dedicated to substance abuse treatment, the offender participates in weekly group and/or individual counseling sessions, as well as cognitive behavioral and educational sessions in an effort to reduce drug use. This treatment may be a predetermined length of time, or

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<sup>91</sup> Washington State Institute for Public Policy 14.

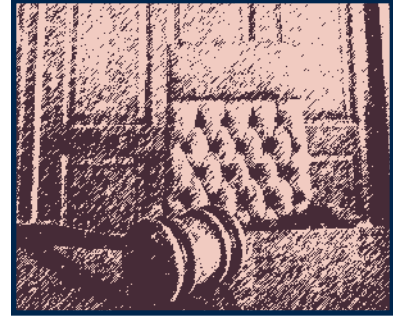
<sup>92</sup> D. Kalich & R. Evans (2006).

<sup>93</sup> Washington State Institute for Public Policy 14.

<sup>94</sup> Florida Department of Corrections (2000).

<sup>95</sup> Washington State Institute for Public Policy 14.

may continue throughout the offender's incarceration. Many drug treatment programs in secure facilities have been evaluated and prove effective in reducing recidivism rates among offender populations.<sup>96</sup>



### *Non-Secure Residential*

Offenders with an identified substance abuse issue may also be placed in a non-secure residential treatment program. These programs are typically medium intensity programs, consisting of a two- to three-month intensive treatment component followed by a three- to four-month employment/reentry component. In Florida, the average length of stay for successful residents of a nonsecure residential treatment program is approximately 6 months; unsuccessful participants average approximately 2 ½ months in the program.<sup>97</sup> Many community-based substance abuse treatment programs have been evaluated and proven effective in reducing recidivism rates among offender populations.<sup>98</sup>

### *Outpatient Substance Abuse Treatment*

Offenders on probation or parole participate in regular substance abuse treatment that may involve weekly group and individual counseling sessions, as well as case management support. Community-based substance abuse treatment programs have been evaluated and proven effective in reducing recidivism rates among offender populations.<sup>99</sup>

### *Theft Offenders*

As discussed earlier in the report, very few offender-based programs exist to directly address theft behavior. However, convicted theft offenders will go through the risk assessment process at the outset of their sentence and may be placed in one of the substance abuse programs or anger management programs listed above as a result of their risk assessment findings.

### *Traffic Offenders*

As discussed earlier in the report, non-DWI traffic offenders generally are fined and subject to drivers license restrictions. Some States may require that traffic offenders participate in a driver improvement program or traffic school program. Referral to these programs and tracking of program completion is generally managed by the State motor vehicles department. This process and descriptions of typical driving programs are listed below.

## **Motor Vehicle Department Programs**

In some cases the court orders a traffic offender to participate in a driver improvement program, or traffic school, as a result of a traffic violation, in other cases the State licensing agency requires completion of a driver education program in order to maintain eligibility for a driver's license.<sup>100</sup> In some cases a traffic offender may elect to participate in such a course in order to reduce court imposed penalties/fines. In all cases, a traffic offender's participation in a driver improvement program as a consequence of a traffic violation is generally tracked by the State motor vehicle department. The State motor vehicle department main-

<sup>96</sup> Ibid.

<sup>97</sup> Florida Department of Corrections (2000)

<sup>98</sup> Washington State Institute for Public Policy 14.

<sup>99</sup> Ibid.

<sup>100</sup> NHTSA (2007) *Summary of State Speed Laws, 10th Edition.*

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tains a list of approved programs, communicates with the offender and the court (if applicable) regarding program participation and completion, and maintains the driving records of licensed drivers.

Driver improvement classes vary across and within States. In some States, a uniform curriculum is mandated; in other States the course must only be approved by the State.<sup>101</sup> Some States offer distinct programs for distinct offenders: first-time traffic offenders, repeat traffic offenders, aggressive drivers or drinking drivers. The curricula of these classes are tailored to the type of offender, and the timeframe required for completion tends to increase with the severity of the offense or infraction. Other States offer very limited driver improvement programming.

Typical driver improvement classes last from 4 to 8 hours and tend to focus on improving participants' knowledge and driving skills in order to avoid future traffic violations and crashes. Very few recidivism studies regarding the effectiveness of driver improvement classes have been conducted. The variance in the class curricula and types of participants across the programs makes it difficult to generalize regarding the effectiveness of these programs.

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<sup>101</sup> A.J. McKnight & A.S. Tippetts (1997).



## CHAPTER SIX: DISCUSSION AND CONCLUSIONS

This project uses criminal history information to identify a specific population of offenders that may be at risk for exhibiting DWI behavior and examines programs and strategies that may have the potential to prevent incidences of DWI among this offender population.

### Data Findings

Data analyses findings in California, Florida, and New York suggest that a significant number of first-time DWI offenders in those States have a history of prior criminal behavior. These findings should not be surprising, given that research during the past few decades identifies two scientifically proven causes of DWI behavior: alcohol consumption and antisocial behavior.<sup>102</sup> As discussed in Chapter 3, numerous studies have examined DWI behavior in efforts to explain and predict such behavior. While numerous correlates have been identified, only these two causes have been consistently proven using statistically sound methodologies. Antisocial behavior includes violations of laws of any type, criminal, civil, and traffic.

While antisocial behavior may be demonstrated by a variety of activities, criminal and traffic law violations can be examined on a large scale using State-level criminal history data. Using such data, findings suggest that of those first-time DWI offenders with prior justice system involvement, arrests for drugs, assault, theft and traffic are most common. While these analyses suggest that DWI offenders with prior criminal behavior may be more specifically identified through the types of arrests in their background, it is important to note that these four offense types are typically among the most common types of offenses for which people are arrested across the country each year.<sup>103</sup> Additional research in this area will provide context for the current findings, as well as more specific characteristics associated with these identified offenses that correlate with impaired driving behavior.

One issue that should be addressed is the distinction between first-time DWI offenders, and “one-time” DWI offenders. As discussed in Chapter 3, research findings suggest that prior criminal behavior positively correlates with recidivism among DWI offenders.<sup>104</sup> If this is the case, it is likely that some number of first-time offenders identified in this project’s analyses will go on to be arrested again for DWI. In order to examine “first-time” offenders who will ultimately be “one-time” offenders, an examination of DWI offenders arrested only one time during a specified timeframe is required. A comparable methodology would be to identify the DWI offenders arrested as first-time offenders during this project and examine subsequent criminal history data to identify those that are rearrested for DWI. An examination of “one-time” offenders with prior criminal histories and repeat offenders with prior criminal histories could then be made. Findings distinguishing these two populations may inform the opportunities for intervention and/or the approaches to intervening with “one-time” and repeat DWI offenders.

Additionally, an examination of the scale of DWI offending among those arrested for drugs, assault, theft, and traffic would inform our understanding of the need to focus intervention efforts with these types of offenders. Each year there are approximately 1.8 million arrests for assault, 1.1 million arrests for theft/larceny, and 1.9 million arrests for drug offenses.<sup>105</sup> Traffic citations are significantly more common, with

<sup>102</sup> MacDonald & Mann (1996).

<sup>103</sup> Bureau of Justice Statistics (2007) *Sourcebook of Criminal Justice Statistics, 31st Edition*.

<sup>104</sup> Gould & Gould (1992); Nochajski, Miller, Wieczorek & Whitney (1993); Wells-Parker, Cosby, & Landrum (1986).

<sup>105</sup> Federal Bureau of Investigation (2007) Table 29.

estimates between 25 million to 50 million each year.<sup>106</sup> One potential research project could identify all offenders arrested for these four offense types during a specified timeframe in the past. An examination of future arrests during an extended timeframe to identify those who become DWI offenders, and an examination of the demographic characteristics of those offenders, would provide insight into the actual percentage and demographic characteristics of drugs, assault, theft, and traffic offenders who are subsequently arrested for DWI. For example, with such a high estimated number of traffic citations each year, compared to the number of arrests for the other three offenses, it seems likely that an individual's history of arrests for traffic offenses may be much less significant than a prior arrest for assault, theft or drugs in predicting future DWI behavior. Further examination of these four offense types and future DWI behaviors would contribute to our understanding of these issues.

Finally, prior arrests for specified offenses are only one potential correlate for future DWI behavior. Research focused on a smaller sample of first-time DWI arrestees that provides an opportunity to examine prior arrests, adjudication and sentencing outcomes, as well as detailed socioeconomic and demographic characteristics, will result in additional variables that correlate with DWI behavior. Such research would provide insight into the types of drivers involved in both DWI behavior and other criminal behavior.

In order to use these data findings to identify potential opportunities for intervention with a population of offenders who may be more likely to subsequently be arrested for an impaired driving violation, prior arrest information should be only one component of a typology of characteristics which correlates with impaired driving behavior. Practitioners may use these findings in conjunction with existing research findings which identify socioeconomic and demographic characteristics associated with DWI behavior.

## **Programs and Strategies: Opportunities and Potential Techniques for Intervention**

The programs and strategies to address assault, Drugs, theft and traffic offenders described in Chapter 5 suggest that most of these offenders experience standardized processes and programming during their involvement with the criminal justice system. The exception would be traffic offenders, who tend to receive minimal, if any, pretrial supervision, and typically are sentenced to fines and driver's license restrictions.

Using the data findings and programs and strategies descriptions from this project, as well as NHTSA's "Countermeasures That Work"<sup>107</sup> document, brief discussions regarding potential opportunities and techniques for intervention are included below. It should be noted that these are ideas in early phases, derived from the findings of this study with the goal of preventing future DWI behavior by assault, drug, theft and traffic offenders. Future research findings will likely focus efforts more specifically and direct interventions more effectively. However, the cost of examining and experimenting with these ideas may in some cases be minimal, while potentially preventing alcohol- or drug-involved crashes.

### ***Pretrial Opportunities***

Information gathered by pretrial services agencies during pretrial investigations and defendant supervision may be useful in identifying assault, drug, theft or traffic defendants with characteristics that correlate with subsequent DWI arrests. Existing information gathering techniques and/or pretrial risk assessment tools may already identify socioeconomic and demographic characteristics that correlate with DWI behavior. An agency DWI prevention policy or guide could be developed which identifies that if these characteristics are present in conjunction with an assault, drug, theft or traffic offense, the pretrial services agency may consider that offender at risk for future DWI behavior. The pretrial agency may then consider using one or more

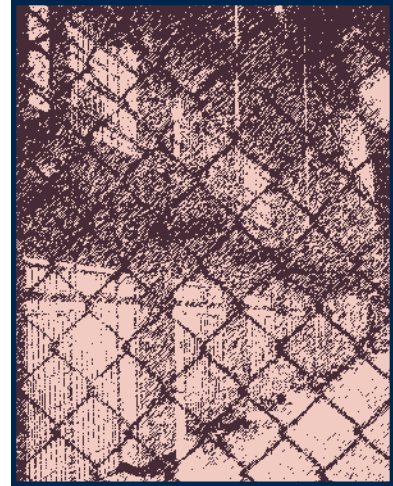
<sup>106</sup>National Motorists Association (2007); this estimate includes criminal and traffic offenses, including DUI offenses.

<sup>107</sup>Hedlund (2005).

of the NHTSA DWI “Countermeasures That Work” activities as intervention or treatment in an effort to prevent future DWI behavior.

If a pretrial services agency’s existing risk assessment tool does not capture socioeconomic and/or demographic characteristics that correlate with DWI behavior, the agency may consider modifying the tool to capture those variables, if interested in identifying at-risk offenders and implementing prevention techniques.

Pretrial staff may refer these identified defendants to substance abuse counseling, or may use an alcohol brief intervention (see below) if appropriate. Using the principles of pretrial diversion programs, additional strategies that could be considered include intensive community supervision or alcohol interlock installation.



### Substance Abuse Treatment

If pretrial staff identify a defendant in need of substance abuse treatment, he or she may be referred to a third-party treatment provider, or a local public treatment program. These programs typically operate in the community as well as in the local jail.

### Intensive Community Supervision

If pretrial staff identify an assault, drug, theft or traffic defendant released to the community with characteristics that escalate his/her risk for DUI, a more intensive level of supervision may be applied while the defendant awaits adjudication and sentencing. This may be a formal or informal process, to be determined by the pretrial services agency or the court.

### Alcohol Ignition Interlock Installation

If pretrial staff identify an assault, drug, theft or traffic defendant released to the community with characteristics that escalate his/her risk for DUI, a requirement to install an alcohol ignition interlock may be considered. Legal issues regarding the use of this tool impact all 50 States and would have to be considered prior to the introduction of this measure associated with prevention activities.

### Alcohol Brief Intervention

A countermeasure that has been proven effective in preventing DWI behavior is the alcohol brief intervention. “Brief interventions take advantage of a ‘teachable moment’ when a patient can be shown that alcohol use can have serious health consequences.”<sup>108</sup> While this is most commonly used in hospitals and trauma centers with injured patients screened for alcohol use problems, it may be effective with offenders, either incarcerated or in the community, who were impaired when arrested for their presenting offense, or who are impaired during office visits or court appearances. In addition to the brief intervention provided by corrections staff, the offender would also be referred for appropriate substance abuse treatment.

## ***Corrections Opportunities***

Similar to the opportunities identified during pretrial phases, opportunities to prevent possible future DWI behavior may exist within the corrections system, in the community, as well as during incarceration and at the point of re-entry to the community. Using relevant data collected during risk assessment processes, and supplementing the standardized assessment process if determined appropriate, corrections staff may identify assault, theft, drug or traffic offenders who are at-risk for future DWI arrests. As a component of the

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<sup>108</sup> Ibid.

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holistic approach to offender supervision and treatment, such an offender may be referred to treatment or programming to address the DWI risk at any point during his or her involvement with the corrections system. Additionally, alcohol brief interventions may be used with offenders as appropriate.

Programming which may present an opportunity to prevent future DWI behavior may include substance abuse treatment, intensive community supervision, DWI prevention education activities and/or alcohol interlocks.

### Substance Abuse Treatment

Substance abuse treatment programs, as described in Chapter 5, are regularly operated and/or used by corrections agencies, both within secure facilities and the community. Referrals to these programs are based on risk assessments and presenting offenses. Of particular focus may be ensuring that an incarcerated offender with substance use issues receive treatment not only while incarcerated, but upon re-entry; treatment should continue in the community to prevent relapse and support a successful re-entry. Reducing substance abuse and addiction should reduce incidences of DWI.

### Intensive Community Supervision

As discussed in Chapter 5, a community risk assessment process is generally used by the supervising corrections agency upon an offender's conviction. The risk assessment examines offender characteristics to determine the level of supervision that will most effectively ensure an offender behaves successfully in the community. Intensive community supervision of DWI offenders has been proven successful in preventing repeat DWI behavior.<sup>109</sup> Corrections agencies may consider expanding existing intensive community supervision programs to include assault, theft, drug or traffic offenders with multiple characteristics that place them at highly elevated risk for future DWI behavior. In addition, upon release from incarceration, offenders re-entering the community may undergo a community-level risk assessment which may identify candidates for intensive community supervision services.

### DWI Prevention Education

As a component of standard probation or incarceration for assault, theft, drug or traffic offenders, a corrections agency may consider requiring participation in existing DWI prevention education programs, as a component of the offender's treatment. Or, existing anger management or batterers programs could be supplemented to include DWI prevention education activities. Such educational efforts could be operated internally, or by community groups. Such a strategy would require minimal resources; existing curriculum could be used and/or programming may be available through local groups already working in the community. However, standard DWI prevention curriculums may need to be modified to more specifically address this offender population. This unique group of participants may respond more effectively to certain teaching techniques that will require adaptation of standard DWI prevention curriculum.

### Alcohol Ignition Interlock Installation

If corrections staff use a validated risk assessment process to identify an assault, drug, theft or traffic defendant released to the community, either upon sentencing or re-entry following incarceration, with characteristics that escalate his/her risk for DWI, a requirement to install an alcohol ignition interlock may be considered. Legal issues regarding the use of this tool impact all 50 States and would have to be considered prior to the introduction of this measure associated with prevention activities.

## ***Motor Vehicle Department Opportunities***

Driver improvement programs and traffic school programs may consider adding or increasing DWI prevention education components in existing programs. Few evaluations studying the impacts of driver improve-

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<sup>109</sup> Ibid.

ment and traffic school programs on subsequent driving behavior have been conducted during the last decade. An examination of effective curriculums or programs that reduce or prevent traffic infractions, crashes and/or DWI behavior among participants would document successful strategies for emulation nationwide.

## *Discussion*

This study's data findings suggest that local and State-level criminal justice systems and motor vehicle departments have the opportunity to use local or State data to identify offender subgroups in their jurisdictions that may be at increased risk for future DWI behavior. By examining offender data and risk assessment information, guided by this study's findings and existing DWI correlates research, local and State-level policy makers and practitioners may be able to further identify people already involved in the justice system who may most benefit from targeted DWI prevention efforts. Countermeasures that are effective at preventing DWI behavior focused on these subgroups may result in reduced DWI behavior.

Inherent in the development of new DWI prevention strategies using this study's data findings is the challenge of evaluation. Criminal offenders generally present with numerous needs and will often participate in various treatment or education programs. Current programming typically examines recidivism as a key component of evaluation. In this case, evaluating subsequent DWI behavior may not be as convincing without a control group comparison. However, decreases in overall rates of DWI in localities implementing any one of these strategies or programs may suggest promising approaches warranting further examination.

## **Summary of Research Recommendations and Program Implications**

The findings of this study generate interesting questions and ideas, both from a researcher's and practitioner's perspective. Opportunities for further research to increase our knowledge regarding links between prior arrests and future DWI behavior, as well as opportunities for targeting DWI prevention efforts rise from these findings. Recommended research efforts and the implications for DWI prevention and intervention programming are summarized below.

### *Research*

- **Distinguish between first-time DWI offenders and “one-time” DWI offenders:** Given that existing research suggests that prior criminal behavior correlates positively with recidivism among DWI offenders, it would be important to distinguish between DWI offenders arrested only once during an extended timeframe and those arrested for DWI repeatedly. A comparison of arrest histories of those two populations would be informative.
- **Examine the scale of DWI offending among those arrested for drugs, assault, theft, and traffic offenses:** Given the large numbers of people arrested each year for drugs, assault, theft, and traffic offenses, it would be informative to better understand the percentage of offenders within those categories who subsequently go on to be arrested for DWI behavior, and the demographic characteristics of those offenders.
- **Examine characteristics of first-time DWI offenders in detail:** In order to better identify offenders at risk for future DWI behavior, a detailed examination of a smaller sample of first-time DWI offenders with prior arrest histories is recommended. Socioeconomic and demographic characteristics could be analyzed, in addition to prior arrests, adjudication and sentencing information.

## **Program Implications**

- Use risk assessment information during pretrial phase of the criminal justice process to identify people at risk for DWI behavior: Pretrial services agencies that gather demographic and socioeconomic information regarding assault, drug, theft and/or traffic offenders may be able to use that information to identify people at greater risk for future DWI behavior. If they do not currently capture such information the pretrial services agency may consider modifying their risk assessment process to do so.
- Use risk assessment information during the corrections phase of the criminal justice process to identify people at risk for DWI behavior: Corrections agencies typically gather demographic and socioeconomic information regarding all offenders in their care upon sentencing, as well as upon re-entry into the community following incarceration. Risk assessment information regarding assault, drug, theft and/or traffic offenders may identify people at greater risk for future DWI behavior. If current risk assessment processes do not currently capture such information, the Corrections agency may consider modifying their risk assessment process to do so.
- Upon identification of people at increased risk for DWI behavior, refer to programming: Countermeasures that work with DWI offenders may prevent future DWI behavior among those at increased risk for such behavior. Potential interventions are:
  - Intensive community supervision;
  - Alcohol ignition interlock;
  - Alcohol brief intervention;
  - Substance abuse treatment; and
  - DWI prevention education.
- Consider increasing DWI prevention education components to existing driver improvement programs: Motor vehicle departments should consider increasing or adding DWI prevention education components to existing driver improvement or traffic school programs. In addition, evaluations of existing driver improvement curricula would better inform practitioners regarding effective measures in reducing traffic infractions, crashes and DWI behavior.
- Local or State-level policy makers and practitioners use local data to identify offender subgroups at increased risk for DWI behavior: Local and State-level criminal justice and motor vehicle department policy makers and practitioners should consider using local or State-level offender data and risk assessment information, guided by this study's findings and existing DWI correlates research, to further identify people already involved in the criminal justice system who may most benefit from targeted DWI prevention efforts.

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## **APPENDICES**

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## APPENDIX A: DATA DESCRIPTIONS

### CALIFORNIA

#### *Overview*

The California dataset contained approximately 4 million records of DWI offenders arrested in California from January 1, 2002, through December 31, 2002. The dataset includes the criminal histories of these arrestees, including criminal and traffic offenses. Traffic offenses included in this dataset are listed at the conclusion of this section. The following critical variables are included in the dataset and were used in the State data analysis: unique identifier, date of birth, gender, arrest date, and offense.

Upon cleansing the data, the dataset analyzed was comprised of 138,584 first-time DWI offenders arrested between January 1, 2002, and December 31, 2002.

Arrest was the identifying action that triggered inclusion in the analysis. This was the case for both the presenting DUI charge, as well as all prior offenses. Dispositions of offenses were not examined.

#### *Data Source*

This dataset was provided by the California Department of Justice; official permission to use this data for the purposes of the NHTSA Preventing First-Time DWI Offenses project was granted.

California maintains a criminal history database containing all offense information for arrestees statewide. The Automated Criminal History System (ACHS) is a centralized, automated system containing criminal history summary information on persons arrested and fingerprinted in California. All State and local law enforcement agencies and courts submit data to the California DOJ, which maintains this database. Arrest data dates back as far as 1930. The dataset used for the purposes of this project was extracted from the ACHS.

In California a DUI is removed from a person's official criminal record following 10 years of non-DUI activity. A subsequent DUI offense is then considered a first-time offense. In this respect some first-time offenders included in this dataset may have prior DUI arrests that occurred more than ten years prior to 2002.



## Traffic Offenses

California	
code	Description
54000	TRAFFIC OFFENSE
54004	14601(A) VC-DRIVE:SUSPENDED/ETC LIC:RECKLESS
54005	23103 VC-RECKLESS DRIVING
54006	23104 VC-RECKLESS DRIVING W/INJURY
54007	23109(A) VC-ILLEGAL SPEED CONTEST
54008	23109(B) VC-ILLEGAL EXHIBITION OF SPEED
54009	23109(C) VC-BLOCK ROAD FOR SPEED CONTEST
54010	655(A) HN-RECKLESS/NEGLIGENT WATERCRAFT USE
54011	27315 VC-SEATBELT VIOLATION
54012	21201 VC-OPERATE BIKE W/O BRAKES
54013	24002 VC-UNLAWFUL OPERATION OF VEHICLES
54014	24400 VC-HEADLAMPS:OPR/AMOUNT/SIZE VIOLATION
54015	26708.5 VC-WINDOW INSTALL/ETC MATERIAL VIOL
54016	5902(A) VC-FAIL NOTIFY DMV:OWNERSHIP TRANSFER
54017	14604(A) VC-OWNER ALLOW UNLICENSED OPR VEHICLE
54018	16020(A) VC-NO PROOF:FINANCIAL RESPONSE:VEH
54019	21202(A) VC-FAIL RIDE BIKE:RIGHT EDGE OF ROAD
54020	480 VC-HIT AND RUN/DEATH OR INJURY
54021	481 VC-HIT AND RUN/PROPERTY DAMAGE
54037	20001 VC-HIT AND RUN:DEATH OR INJURY
54038	20002(A) VC-HIT AND RUN:PROPERTY DAMAGE
54054	TRAFFIC VIOLATION
54055	504 VC-TAMPERING W/AUTO
54056	20002 VC-HIT AND RUN
54057	23121 VC-DRINKING IN VEHICLE
54058	23122 VC-POSSESS OPEN CONTAINER
54059	23123 VC-STORAGE OF OPEN CONTAINER
54060	14601 VC-DRIVE W/SUSPENDED LICENSE
54061	23109 VC-SPEED CONTEST/EXHIBIT/BLOCK ROAD
54062	14601.2 VC-DRIVE WHILE LICENSE SUSP FOR DUI
54063	20002(B) VC-HIT&RUN BY RUNAWAY VEH:PROP DAMAGE
54064	21464(C) VC-INTRFER W/TRAFFIC DEVICE:DEATH/INJ
54065	23104(B) VC-RECK DRIV CAUSE GBI W/SPEC PR CONV
54066	3775 PU-HIGHWAY CARRIER OPERATE W/O PERMIT
54067	3571 PU-HWY CONTRCT CARR OPERATE W/O PERMIT
54068	656(A) HN-FAIL TO RENDER ASSISTANCE:VESSEL
54069	20001(A) VC-HIT AND RUN:DEATH OR INJURY
54070	20001(B)(1) VC-HIT AND RUN:INJURY
54071	20001(B)(2) VC-HIT AND RUN:PERM INJ OR DEATH
54072	131 HN-OBSTRUCT NAVIGATION OF NAVIGABLE WATERS
54073	20002(A)(2) VC-HIT&RUN PROP DAMAGE:NOTIFY REQ
54074	20002(A)(1) VC-HIT&RUN PROP DAMAG:LOC/ETC REQ
54075	21651(B) VC-DRIVE WRONG:DIVIDED HWY
54076	21651(B) VC-DRIVE WRONG:DIV HWY:INJ/DEATH
54077	652(C) HN-OPERATE VESSEL W/O PROPER EQUIPMENT
54078	731 SH-VEH/ETC FOR SALE/ETC ON HIGHWAY
54079	23104(A) VC-RECKLESS DRIVING WITH INJURY
54080	21651(C) VC-DRIVE WRONG:DIV HWY:INJ/DEATH

California	
code	Description
54081	8804 VC-REG/ETC VEH IN FOREIGN JURISDICTION
54082	14601.2(B) VC-DRIVE:RESTRICTED LICENSE:DUI
54083	14601.1(A) VC-DRIVE WHILE LIC SUSPEND/ETC
54084	14601.3(A) VC-HABITUAL TRAFFIC OFFENDER
54085	14601.5(A) VC-DRIVE:LIC SUS/ETC:DUI/RFUSE TST
54086	23103(A) VC-RECKLESS DRIVING:HIGHWAY
54087	23103(B) VC-RECKLESS DRIVING:PARKING FACILITY
54088	21650.1 VC-OPR BIKE:ROAD/ETC:WRONG WAY
54089	40302(A) VC-FAIL PROVIDE CDL/ID:WHEN ARRESTED
54090	23222(A) VC-POSSESS OPEN CONTAINER:DRIVING
54091	23224(B) VC-PASSENGER:MINOR:POS/ETC ALC:VEH
54092	40504(B) VC-FAKE SIGNATURE:PROMISE TO APPEAR
54093	40508(A) VC-FAIL TO APPEAR:WRITTEN PROMISE
54094	40508(B) VC-FAIL TO PAY FINE:VEH OPR VIOL
54095	42003(A) VC-FAIL TO PAY COURT ORDERED FINE
54096	42005(E) VC-FAIL TO ATTEND:TRAFFIC SCHOOL
54097	23224(A) VC-MNR KNOWINGLY OPR VEH:CARRY ALC
54098	21453(A) VC-FAIL STOP LIMIT LINE/ETC AT RED
54099	4000(A) VC-NO REG:VEHICLE/TRAILER/ETC
54101	16028(A) VC-FAIL PROVE FIN RSP:PO REQUEST
54102	16025(A) VC-FAIL PROVIDE ID/INS/ETC:ACCIDENT
54103	5200 VC-IMPROPER DISPLAY OF LICENSE PLATES
54104	21650 VC-FAIL TO DRIVE RIGHT HALF ROAD
54105	21802(A) VC-FAIL YIELD ENTRANCE THROUGH HWY
54106	22350 VC-UNSAFE SPEED:PREVAILING CONDITIONS
54107	12500(A) VC-DRIVE W/O LICENSE
54108	14601.2(A) VC-DRIVE:LIC SUSP/ETC:DUI:SPEC VIOL
54109	24252(A) VC-FAIL TO MAINTAIN VEH LIGHT EQUIP
54110	24601 VC-FAIL TO MAINTAIN LICENSE PLATE LAMP
54111	27315(E) VC-PASNGR 16+ FAIL WEAR SAFETY BELT
54112	21461.5 VC-PEDESTRIAN FAIL OBEY TRAFFIC SIGNS
54113	12500(B) VC-OPR MOTORCYCLE W/O PROPER LICENSE
54114	21801(A) VC-FAIL TO YIELD PRIOR TO LEFT/U-TURN
54115	22107 VC-UNSAFE TURN &/OR WITHOUT SIGNAL
54116	27150(A) VC-INADEQUATE MUFFLERS
54117	27315(D) VC-SEATBELT VIOL:VEHICLE
54118	2416(C) VC-VIOL EMERGENCY VEHICLE PERMIT REGS
54119	2803(A) VC-VIOLATE LOAD/PERMIT REGULATIONS
54120	2813 VC-FAIL TO STOP:COMMERCIAL VEH INSPECTION
54121	21963 VC-FAIL YIELD RT-O-WAY:BLIND PEDESTRIAN
54122	21457(A) VC-FAIL TO STOP:FLASHING RED LIGHT
54123	23127 VC-OPERATE UNAUTH MOTOR VEH:TRAILS/PATHS
54124	23332 VC-TRESPASS ON NON-PUB VEHICLE CROSSING
54125	31602(A) VC-TRANSPORT EXPLOSIVES W/O VALID LIC
54126	35550(A) VC-VEH EXCEED WEIGHT LIMIT:1 AXLE
54127	35551(A) VC-VEH EXCEED WEIGHT LIMIT:2+ AXLES
54128	38316 VC-RECKLESS DRIVING OFF-HWY VEHICLE
54129	38317 VC-RECKLESS DRIVING OFF-HWY VEH:W/INJURY
54130	40616 VC-FAIL TO PROVIDE PROOF OF CORRECTION

California	
code	Description
54131	655.2(A) HN-VESSEL EXCEED SPEED LIMIT
54132	22106 VC-START PARKED VEH/UNSAFE BACKING:HWY
54133	21451(A) VC-GREEN LIGHT:U TURN/YIELD VIOLATION
54134	22349 VC-EXCESSIVE SPEED
54135	24008.5 VC-VEHICLE EXCEED FRAME HEIGHTS
54136	16028(A) VC-FALSE PROOF:FINANCE RESPONSIBLTY
54137	21100.3 VC-FAIL TO OBEY TRAFFIC REGULATOR
54138	26710 VC-OPR VEH W/DEFECTIVE WINDSHIELD/ETC
54139	23140(A) VC-MINOR DRIVE VEHICLE W/BAC 0.05%
54140	12951(A) VC-DRIVE WITHOUT VALID LICENSE
54141	21201(D) VC-BIKE HEADLIGHT/ETC VIOLATION
54142	26700 VC-NO WINDSHIELDS
54143	26453(A) VC-BRAKE SYSTEM CONDITION VIOLATION
54144	24603(B) VC-STOPLAMPS VIOL:SPEC VEH/DATES
54145	21955 VC-JAYWALKING
54146	21461(A) VC-DRIVER FAIL TO OBEY SIGNS/SIGNALS
54147	23223 VC-OPEN CONTAINER OF ALCOHOL IN VEHICLE
54148	4462(A) VC-FAIL PROVIDE VEH REG:PO REQUEST
54149	22108 VC-FAIL TO SIGNAL BEFORE TURNING VEHICLE
54150	14603 VC-OPR VEH:VIOLATE LICENSE RESTRICTION
54151	655(A) HN-RECKLESS/NEGLIGENT WATERCRAFT USE
54152	23225 VC-OWNER/DRIVER ALLOW OPEN ALCOHOL:VEH
54153	21453(D) VC-PEDESTRIAN AGAINST RED LIGHT/ETC
54154	24409(B) VC-FAIL TO DIM BEAMS:FOLLOW VEHICLE
54155	23224 VC-ALCOHOL IN VEHICLE:-21
54156	23152(A)/23152(B) VC-DUI:ALCOHOL/DRUGS
54157	21210 VC-BIKE PARKING/ETC
54158	23140 VC-DRIVE UNDER INFLUENCE:-21
54159	21456(B) VC-PEDESTRIAN AGAINST NO WALK SIGN
54160	21655.5 VC-DISOBEY TRAFFIC LANE SIGNS
54161	21657 VC-DISOBEY DESIGNATED TRAFFIC DIRECTION
54162	21954(A) VC-PED FAIL YIELD:OUTSIDE CROSSWALK
54163	23112 VC-TOSS/DUMP/ETC MATTER:HWY/ETC
54164	27007 VC-OPR VEH:LOUD OUTSIDE AMP SOUND SYSTEM
54165	27151 VC-ILL MOD EXHAUST SYS:EXCEED NOISE
54166	27360(A) VC-PARENT ALOW UNRESTRAND CHILD:VEH
54167	22450(A) VC-FAIL STOP VEH LINE:CROSSWALK/ETC
54168	5204(A) VC-EXPIRED TABS/FAIL TO DISPLALY
54169	21460(A) VC-VEHICLE CROSS DOUBLE SOLID LINE
54170	23111 VC-THROW/ETC CIG/ETC:HWY/ETC
54171	25950 VC-VEHICLE LAMPS/ETC COLOR VIOL
54172	4004(A) VC-FOREIGN COM VEH OPERATE W/O PERMIT
54178	21658(A) VC-UNSAFE LANE CHANGE/ETC
54179	21703 VC-VEHICLE FOLLOW TOO CLOSELY
54180	21754 VC-VEHICLE MAKE UNLAWFUL PASS ON RIGHT
54181	21755 VC-USE SHOULDER/ETC TO PASS ON RIGHT
54182	21806(A) VC-FAIL YIELD/ETC:EMERGENCY VEHICLE
54183	21950(B) VC-PEDESTRIAN IN XWALK STOP/DELAY VEH
54184	21956 VC-PEDESTRIAN FAIL USE LEFT EDGE OF ROAD

<b>California</b>	
code	Description
54185	22101(D) VC-FAIL TO OBEY TURN SIGNS
54186	22102 VC-ILLEGAL U TURN:BUSINESS DIST/ETC
54187	22520.5 VC-VENDING ON/NEAR FREEWAY:W/PR
54188	23116(A) VC-CARRY PERSON IN BACK OF TRUCK
54189	23136 VC-DUI -21:ALCOHOL SCREENING .01
54190	23226 VC-STORE OPEN/ETC CONTAINER ALC IN VEH
54191	24250 VC-DRIVE WITHOUT LIGHTS AT DARK
54192	24409(A) VC-FAIL DIM BEAMS:ONCOMING:SPEC DIST
54193	24600 VC-TAILLAMP VIOLATIONS
54194	24603 VC-STOPLAMP VIOLATIONS
54195	24604 VC-NO LAMP/FLAG/ETC:EXTENDED LOAD VEH
54196	26708(A) VC-OPR VEHICLE:WINDOWS OBSTRUCTED
54197	27315(F) VC-OPERATE VEHICLE W/UNSAFE SEATBELTS
54198	27360(B) VC-UNRESTRAINED CHILD IN VEHICLE
54199	27360.5(A) VC-UNBELTED CHILD 4+:PARENT VEHICLE
54200	27803(B) VC-MOTORCYCLE/ETC:SAFETY HELMET VIOL
54201	40302(B) VC-FAIL PROVIDE WRITEN PROMISE:ARREST
54202	14601.4(A) VC-DRIVE:LIC REV/ETC:INJ ACCIDENT
54203	22451(A) VC-FAIL TO STOP/ETC RAILROAD XING/ETC
54204	26701(D) VC-WRONG COLOR:WINDOW/ETC MAT:VEHICLE
54205	27465(B) VC-TIRE TREAD DEPTH VIOLATION
54206	4152.5 VC-FAIL TO REG FOREIGN VEH IN CA
54207	4159 VC-FAIL TO NOTIFY DMV OF ADDRESS CHANGE
54208	4454(A) VC-NO REGISTRATION IN VEHICLE
54209	5201 VC-LICENSE PLATE POSITION VIOLATION
54210	5900 VC-FAIL TO NOTIFY DMV:VEH SALE/ETC
54211	5202 VC-LICENSE PLATE DISPLAY VIOLATION
54212	22348(B) VC-DRIVE IN EXCESS OF 100 MPH
54213	24615 VC-SLOW MOVING VEHICLE EMBLEM VIOLATION
54214	27600 VC-SPECIFIC VEHICLE FENDER/ETC VIOLATION
54215	38305 VC-OFF HWY VEHICLE EXCEED SPEED LIMIT
54216	12511 VC-LICENSEE POSS/ETC 1+ DRIVER LICENSE
54217	23109(B) VC-AIDE/ABET SPEED CONTEST
54218	23109(C) VC-AIDE/ABET IN EXHIBITION OF SPEED
54219	23109(D) VC-BLOCK/OBSTRUCT ROAD:SPEED CONTEST
54220	22100(A) VC-IMPROPER RIGHT HAND TURN
54221	22507.8(A) VC-PARK IN SPACE FOR DISABLED
54222	24402(A) VC-AUXILIARY DRIVING LAMP VIOLATION
54223	28071 VC-VEHICLE BUMPER VIOLATION
54224	21367(B) VC-DISOBEY CONSTRUCTION TRAFFIC CNTL
54225	23175.5 VC-DUI WITHIN 10 YRS OF PR FELONY DUI
54226	26709(B) VC-VEHICLE SIDEVIEW MIRROR VIOLATION
54227	4457 VC-LOST/ETC DMV REG CARD/PLATE VIOL
54228	21752 VC-DRIVE ON LEFT SIDE OF ROAD VIOLATION
54229	27155 VC-FUEL TANK CAP VIOLATION
54230	25651 VC-MOTORCYCLE HEADLAMP VIOLATION
54231	38320(A) VC-LITTERBUGGING FROM VEHICLE
54232	21706 VC-FOLLOW TOO CLOSELY:EMERGENCY VEHICLE
54233	26703(B) VC-SAFETY GLAZING MATERIAL VIOL

California	
code	Description
54299	21804(A) VC-FAIL YIELD TO TRAFFIC:HWY ENTRANCE
54300	27154 VC-GAS TIGHT EXHAUST SYSTEM VIOLATION
54301	29003(A) VC-HITCH/ETC MOUNT VIOLATION
54302	21212(A) VC-FAIL WEAR APPROVED HELMET:BIKE:-18
54303	22349(A) VC-EXCEED SPEED ON HIGHWAY
54304	38505 VC-NO HELMET:ALL TERRAIN VEHICLE
54305	14600(A) VC-FAIL NOTIFY DMV ADD CHANGE:CDL
54306	22400(A) VC-DRIVE TOO SLOWLY/ETC
54307	24606 VC-BACKUP LAMPS VIOLATION
54308	26709(A) VC-REARVIEW MIRROR VIOLATION
54309	27001 VC-MISUSE VEHICLE HORN
54310	22454(A) VC-PASS/ETC SCH BUS FLASHING RED/ETC
54311	22523 VC-ABANDON VEHICLE ON HIGHWAY
54312	23247(E) VC-DRIVE W/O INTERLOCK DEVICE
54313	12502(B) VC-NONRES:DRIVE W/O REQ MED CERT
54314	26311(A) VC-SERVICE BRAKES VIOLATION
54315	40508(C) VC-FAIL COMPLY COURT ORD:VEH RELATED
54316	24952 VC-VIOL VISIBILITY REQUIRE:TURN SIGNAL
54317	21106(B) VC-CROSS IN XWALK PROHIBITED BY SIGN
54318	21957 VC-HITCHHIKE IN ROADWAY
54319	22100(B) VC-LEFT TURN AT INTERSECTION VIOL
54320	22104 VC-TURN BY FIRE STATION VIOLATION
54321	24005 VC-SELL/ETC UNLAWFUL EQUIPMENT
54322	38310 VC-VIOL 15 MPH SPEED:CAMPGROUND/ETC
54323	4160 VC-FAIL TO CHANGE ADDRESS ON REGISTRATION
54324	27153 VC-EXCESSIVE EXHAUST VIOLATION
54325	14607 VC-ALLOW UNLICENSED MINOR TO DRIVE
54326	16030(A) VC-PROVIDE FALSE EVIDENCE:INS/ETC
54327	21750 VC-OVERTAKE VEH/BIKE:LEFT PASS VIOLATION
54328	40515 VC-WARRANT:FAIL TO APPEAR VEH CODE VIOL
54329	2818 VC-CROSS FLARE/CONE PATTERN VIOLATION
54330	22500 VC-PARKING/STOP/ETC VEH VIOL:SPEC CIRC
54331	24008 VC-MODIFIED VEHICLE RIM HEIGHT VIOLATION
54332	27459 VC-SNOWTIRES/CHAINS VIOLATION:POSTED
54333	23103.5 VC-PLEA TO 23103 IN LIEU OF
54334	9406 VC-FAIL TO REPORT WEIGHT ALTERATION/ETC
54335	28000 VC-EMERGENCY EXIT VIOL:VAN REFRIGERATOR
54336	34501.12(F) VC-MOTOR CARRIER:FAIL FILE APP/FEE
54337	38020 VC-OFF HIGHWAY VEHICLE ID VIOLATION
54338	4464 VC-DISPLAY ALTERED LICENSE PLATES
54339	21712(B) VC-UNLAWFUL RIDING:VEHICLE
54340	26706 VC-WINDSHIELD WIPER VIOLATION
54341	21660 VC-PASS/YIELD VIOLATION:MEET VEHICLE
54342	23336 VC-VEH XING/ETC:SIGN/REGULATION VIOL
54343	21651(A) VC-DIVIDED HWY:CROSS/UTURN VIOL
54344	22103 VC-UNLAWFUL UTURN:RESIDENTIAL
54345	15250(A) VC-DRIVE W/O COMMERCIAL VEH LICENSE
54346	22514 VC-PARK/ETC W/IN 15 FT FIRE HYDRANT
54347	24800 VC-DRIVE WITH PARKING LIGHTS ONLY

California	
code	Description
54348	31401(B) VC-OPR FARM LABOR VEH W/O CERTIFICATE
54349	34507.5(A) VC-OPR CARRIER W/O ID NUMBER
54350	34620(A) VC-OPR COMMERCIAL VEH:NO ID/REG
54351	22520.5(A) VC-VENDING ON/NEAR FREEWAY
54352	22105 VC-MAKE U TURN WHILE VIEW OBSTRUCTED
54353	22505(B) VC-STOP/PARK/ETC VEH:RESTRICTED AREA
54354	16028(C) VC-NO PROOF FINANCIAL RESP:ACCIDENT
54355	35784 VC-VEHICLE PERMIT TERMS/ETC VIOL
54356	20003(A) VC-INJ/DTH ACC:NO DRIVER INFO
54357	26101 VC-EQUIPMENT MODIFYING DEVICE VIOL
54358	34506.3 VC-FAIL TO COMPLY:INSPECTION RULE/REG
54359	4000.1 VC-REGISTRATION/ETC:SMOG CERTS VIOL
54360	21663 VC-DRIVE ON SIDEWALK VIOL
54361	23221 VC-DRINK ALCOHOL IN VEHICLE ON HWY
54362	22520.6(A) VC-VEND/ETC:HWY REST STOP/ETC
54363	21655(B) VC-SPEC VEHICLES DRIVE IN WRONG LANE
54364	21701 VC-INTERFERE WITH DRIVER CNTL
54365	11819(B) VC-LEND VEHICLE SALES LICENSE
54366	11819(E) VC-UNAUTHORIZED DUP/ETC VEH SALES LIC
54367	23115 VC-RUBBISH/ETC VEH TRNSP UNCOVERED LOAD
54368	23116(B) VC-RIDE BACK OF MOTOR TRUCK VIOL
54369	12517(B) VC-PUPIL ACTIVITY BUS:NO CDL & CERT
54370	22356(B) VC-EXCEED POSTED SPEED LIMIT
54371	22406(A) VC-TRUCK/ETC EXCEED 55 MPH SPEED
54372	21453(B) VC-TURN ONTO ONEWAY ST AT RED LIGHT
54373	21453(C) VC-FAIL TO STOP AT LINE AT RED LIGHT
54374	22407 VC-TRUCK/ETC EXCEED POSTED SPEED LIMIT
54375	14610.5(A)(2) VC-IMPERSONATE TO GET CDL/ETC
54376	24003 VC-VEHICLE WITH UNLAWFUL LAMPS
54377	24602(A) VC-FOG TAILLAMPS VIOL
54378	22526 VC-INTERSECTION/ETC W/O CLEARANCE
54379	22502 VC-PARALLEL PARKING VIOL
54380	27400 VC-HEADSET/ETC VIOLATION:VEH/BIKE
54381	2815 VC-FAIL TO OBEY SCHOOL CROSSING GUARD
54382	21205 VC-FAIL OPERATE BIKE W/AT LEAST 1 HAND
54383	11307(A) VC-VEHICLE VERIFIER FAIL KEEP RECORDS
54384	20008(A) VC-FAIL TO REPORT ACCIDENT:INJ/DEATH
54385	22110 VC-METHOD OF SIGNALING VIOLATION
54386	21209 VC-MOTOR VEHICLE IN BIKE LANE
54387	24953(A) VC-TURN SIGNAL LAMP VIOLATION
54388	21655.8(A) VC-EXPRESS LANE SOLID YEL LINES VIO
54389	21751 VC-PASS W/O SUFFICIENT CLEARANCE
54390	34506(A) VC-FAIL TO COMPLY:DRIVING HOURS/ETC
54391	5753 VC-OWNER FAIL DELIVER/ETC CERT/REG
54392	5753 VC-DEALER FAIL DELIVER/ETC CERT/REG
54393	9850 VC-OPR UNDOCUMENTED VESSEL W/O NUMBERS
54394	9853.2 VC-UNDOC VESSEL FAIL DISPLAY NUMBERS
54395	22349(B) VC-EXCEED 55 MPH SPEED:2 LANE ROAD
54396	12500(C) VC-OPR VEH W/O LIC:OFFSTREET PARKING

California	
code	Description
54397	21460.5(C) VC-DRIVE TWO WAY LEFT TURN LANE
54398	21950(A) VC-FAIL TO YIELD TO PEDESTRIAN:XWALKS
54399	24406 VC-LIGHT DIMMER SWITCH VIOLATION
54400	34501.12(E) VC-CARRIER ORIG APP/FEE INSPEC VIO
54401	5901(A) VC-DLR/ETC FAIL TO NOTIFY DMV:TRANSFER
54402	658(A) HN-TOW SKIER/ETC W/O OBSERVER 12+ YRS
54403	21204(B) VC-BIKE PASSENGER NOT SEATED
54404	21654(A) VC-SLOW VEHICLE IN LEFT LANE
54405	21800(A) VC-FAIL YIELD INTERSECTION:OTHER HWY
54406	22516 VC-FAIL PROVIDE ESC METHOD:LOCKED VEH
54407	24407(B) VC-LOWBEAM GLARE VIOLATION
54408	25106(A) VC-FRONT FENDER/COWL LAMP VIOLATION
54409	22100.5 VC-WRONG LANE UTURN VIOLATION
54410	27156(A) VC-OPR/ETC GROSS POLLUTER
54411	38506 VC-PASSENGER VIO:AL-TERRAIN VEH:PUB LAND
54412	4000.2 VC-OUT OF STATE VEH:NO REG/SMOG CERT
54413	27605 VC-OPERATE UNAUTHORIZED POLICE VEHICLE
54414	21466.5 VC-LIGHT ON HWY:IMPAIR DRIVER VISION
54415	21201(B) VC-BIKE HANDLEBARS ABOVE SHOULDERS
54416	14606(A) VC-HIRE/ETC UNLICENSED DRIVER
54417	21708 VC-DRIVE OVER FIRE HOSE
54418	22352(A) VC-EXCEED PRIMA FACIE SPEED LIMIT
54419	4462(C) VC-UNLAWFUL POSS VEHICLE REG/ETC
54420	21116(A) VC-DRIVE ON LEVEE/ETC W/O RT OF WAY
54421	12120 VC-SALE VEH:NOT OWNER/DEALER
54422	22348(C) VC-SPEC VEH USE WRONG PASS LANE/ETC
54423	22112 VC-SCH BUS DRIVER FAIL DUTIES
54424	24607 VC-VEHICLE REFLECTOR VIOLATION
54425	21455 VC-NON INTERSECTION SIGNAL VIOLATION
54426	22109 VC-MAKE SUDDEN STOP W/O SIGNALING
54427	21800(D) VC-FAIL STOP/YIELD:INOPERATIVE SIGNAL
54428	655.6(A) HN-BUI:OPERATE VESSEL/ETC -21
54429	27317 VC-SELL/ETC PREVIOUSLY DEPLOYED AIRBAG
54430	42005(G) VC-FAIL TO ATTEND TRAFFIC SCHOOL
54431	24951(B) VC-TURN SIGNAL VIOLATION
54432	22515 VC-UNATTENDED VEHICLE VIOLATION
54433	21659 VC-VIOL:THREE-LANE HIGHWAY
54434	21712(A) VC-ALLOW UNLAWFUL RIDING/ETC:VEHICLE
54435	24408 VC-BEAM INDICATOR VIOLATION:VEHICLE
54436	24403 VC-FOG LAMPS VIOLATION
54437	22409 VC-EXCEED SPEED FOR TIRE/WEIGHT
54438	15275(A) VC-NO COMMERCIAL VEHICLE LICENSE/ETC
54439	21460(B) VC-SOLID/BROKEN DOUBLE LINES VIOL
54440	32002(B) VC-TRANSPORT HAZ MAT W/O LICENSE
54441	12815(A) VC-LICENSE LOST/ETC:FAIL DESTROY ORIG
54442	25102 VC-SIDE LAMPS VIOLATION
54443	25109 VC-FRONT RUNNING LAMPS VIOL
54444	9866 VC-DISPLAY/ETC IMPROPER #:UNDOC VESSEL
54445	21651(A) VC-DIVIDED HWY:CROSS/U TURN VIOL

California	
code	Description
54446	12519(A) VC-FARM LABOR VEHICLE LICENSE VIOL
54447	21451(B) VC-GREEN ARROW VIO:U-TURN/YIELD/ETC
54448	21451(C) VC-GREEN SIGNAL VIO:PEDESTRIAN
54449	21953 VC-PEDSTRN FAIL 2 YLD:OVRHD CROSSING AVL
54450	23302(A) VC-REFUSAL TO PAY TOLLS/ETC
54451	27000(A) VC-VEHICLE HORN VIOLATION
54452	28051 VC-ODOMETER VIO:UNLAWFL ALTERATION
54453	22411 VC-MOTOR SCOOTER EXCEED 15MPH
54454	21203 VC-MTRCYCL/ETC ATT 2 VEHICLE ON ROADWAY
54455	21454(C) VC-DRIVER:ENTR/ECT LANE W RED SIGNAL
54456	658.5 HN-OPR MOTOR VESSEL +15HP:-16YRS
54457	40001(A) VC-UNLAW DIRCT DRV OPR OF VEH ON HWY
54458	12500(D) VC-OPR VEH/ETC W/O PROPER LIC TYPE
54459	12520(A) VC-OPR TOW TRUCK W/O CDL/CERT IN POSS
54460	21235(C) VC-OPR MOTR SCOOTER W/O APPRVD HELMET
54461	23550(A) VC-DUI W/PRIOR SPECIFIC CONVICTIONS
54462	23550(A) VC-DUI W/PRIOR SPECIFIC CONVICTIONS
54463	23550.5 VC-DUI WITHIN 10 YR OF PR FELONY DUI
54464	23550.5 VC-DUI WITHIN 10 YR OF PR FELONY DUI
54465	21204(A) VC-BIKE OPERATOR NOT SEATED
54466	21806(C) VC-PEDSTRN FAIL 2 YLD/ETC:EMERG VEH
54467	22111(B) VC-IMP METHOD:RIGHT HAND TURN SIGNAL
54468	26452 VC-VEH BRAKE SYS VIOL:AFTER MOTOR FAIL
54469	27900(A) VC-FOR HIRE VEH/ETC:ID DISPLAY VIOL
54470	35111 VC-PASSENGER VEHICLE LOAD VIOLATION
54471	27907 VC-TOW TRUCK/ETC IDENTIFYING INFO VIOL
54472	22521 VC-PARK ON OR NEAR RAILROAD TRACK
54473	4000.4(A) VC-UNREGISTERED CA BASED VEHICLE
54474	5011(A) VC-IDENT PLATE DISPLAY VIOLATION
54475	22504(A) VC-STOP/PARK ON ROADWAY
54476	21462 VC-ALL TRAFFIC/ETC OBEY SIGNALS
54477	22517 VC-VEHICLE DOOR OPEN TO TRAFFIC
54478	24605(A) VC-TOW TRUCK TAILLAMP VIOL
54479	24605(B) VC-TOW TRK TAIL/STOP LAMP VIOL
54480	38335 VC-HEADLAMP VIOLATION
54481	658.3(A) HN-OPR MTRBOAT/ETC:WITHOUT FLT DEV
54482	14601.5(B) VC-DRIV:LIC SUS/ETC:DRV PRI RESTRD
54483	5900(A) VC-FAIL TO NOTIFY DMV:VEH SALE/ETC
54484	11729(A) VC-DEALER FAIL COMPLY:AGREEMENT
54485	14610(A)(3) VC-UNLAWFUL DISPLAY/ETC DRV LIC
54486	14610(A)(8) VC-UNLAWFUL ALTER AUTH DRV LICENSE
54487	23225(A)(1) VC-OWNER/DRIVER ALLOW OPEN ALC:VEH
54488	32000.5(A) VC-VIOL HAZ MATRIAL LIC DISPLAY
54489	34501.12(G) VC-CARRIER:OPR VEH W/O CHP INSP
54490	35783 VC-SPECIAL PERMIT VIOL:DISPLAY/ETC
54491	35784(A) VC-SPECIAL PERMIT:TERMS/ETC VIOL
54492	22110(A) VC-VIOLATION:METHOD OF SIGNALING
54493	22110(B) VC-INOP SIGNL LAMP:ARM SIGNL
54494	22112(A) VC-SCH BUS DRV:SGNL/STOP VIOL



California	
code	Description
54495	22112(B) VC-FAIL LOAD/UNLD:SCH BUS STOP
54496	22515(A) VC-FAIL SET BRK/ETC:UNATT VEH
54497	22515(B) VC-FAIL PRVENT MOVE:UNATT VEH
54498	23115(A) VC-FAIL COVER RUBBISH VEH LOAD
54499	24607(A) VC-REAR VEH REFLECTOR VIOL
54500	24607(B) VC-REAR REF:VEH MFG/REG A/1-1-65
54501	20006 VC-ACCIDENT:DRIVER W/O LIC/ID
54502	22406.1 VC-COMM VEH XCEED MAX SPEED LIMIT
54503	39002(A) VC-BICYCLE LIC ORDNCE VIOL
54504	21655.5(B) VC-FAIL OBEY TRAF LANE SIGN
54505	21367(C) VC-FAIL OBEY WARNING DEVICE
54506	21803(A) VC-FAIL TO YIELD UNTIL SAFE
54507	23114(B)(1) VC-TRANSP AGGREGATE:CARGO VIOL
54508	23114(E)(1) VC-TRANSP AGGREGATE UNCVRD:HWY
54509	23114(E) VC-AGGREGATE:FAIL TO COVER LOAD
54510	27152 VC-EXHAUST PIPE VIOLATION
54511	29004(A) VC-TOWED VEH:SAFETY CHAIN/ETC REQ
54512	8803 VC-DLR SURRENDER REVOKE LICENSE
54513	21707 VC-UNAUTHORIZED VEHICLE IN FIRE AREA
54514	21966 VC-PEDESTRIAN IN BIKE LANE
54515	24252(B) VC-LAMP VOLTAGE:85 PER REQ VOLT
54516	27501(B) VC-TIRE N/CONFORMANCE W/REGULATION
54517	21718(A) VC-STOP/PARK/LEAVE VEHICLE ON FREEWAY
54518	24603(E) VC-STOPLAMPS VIOL:MUST BE VISIBLE
54519	21228(A) VC-FAIL OPR MOTR SCOOTR:RGT CURB/EDGE
54520	21235(B) VC-OPR MOTR SCOOTR ON HWY W/POST SPD
54521	40519(B) VC-FAIL TO APPEAR:WRITTEN PLEA
54522	21456.2(A) VC-BICYCLE OPR OBEY VEH LAWS
54523	27360.5(B) VC-TRNSPRT CHLD-16 W/OUT RSTRNT
54524	21711 VC-SWERVING OF TOWED VEHICLE
54525	25268 VC-MISUSE:FLASHING AMBER WRNING LGHTS
54526	20001(B)(1) VC-HIT AND RUN:INJURY
54527	20001(B)(2) VC-HIT AND RUN:PERM INJ OR DEATH
54528	5201(F) VC-OBSTRUCTION OF LIC PLATE
54529	21970(A) VC-VEHICLE BLOCK XWALK/SIDEWALK
54530	24007(B)(1) VC-SELL VEH W/OUT SMOG REQUIREMNTS
54531	12509(D) VC-MISUSE INSTRUCTION PERMIT
54532	22405(A) VC-UNSAFE SPEED ON BRIDGE
54533	24410(A) VC-SINGLE BEAM:PROPER ADJUSTMENT
54534	27156(B) VC-NOT EQUIPED W/SMOG DEVICE
54535	21952 VC-FAIL TO YIELD TO PED ON SIDEWALK
54536	35410 VC-REAR PROJECTION VIOLATION
54537	22500(H) VC-PARK UNLAW:DOUBLE PARKING
54538	27801(A) VC-MOTORCYCLE SEAT VIOLATION
54539	20001(A) VC-HIT AND RUN:INJURY OR DEATH
54540	5017(A) VC-IDENTIFICATION PLATE VIOLATION
54541	5201(E) VC-LIC PLATE:LVSTCK TRAILER VIOL
54542	21652 VC-UNLAWFUL ENTRY SERVICE ROAD
54543	24012 VC-FAIL TO COMPLY:MOUNTING REQ

California	
code	Description
54544	24407(A) VC-HIGHBEAM PROJECT 350 FEET
54545	15620(A) VC-CHILD 6- ALONE IN VEH:AT RISK
54546	28051.5 VC-ODOMETER:ADVERTISE RESET DEVICE
54547	TRAFFIC OFFENSE
54548	21113(A) VC-TRESPASS W/VEH ETC:PUB GROUNDS
54549	22410 VC-METAL TIRE:EXCESS 6MPH
54550	27602(A) VC-OPERATE VEHICLE WITH TV VISIBLE
54551	652.5(A) HN-UNAUTHORIZED USE:BLUE LIGHT
54552	21700 VC-OBSTRCT DRIVER VIEW/CONTROL
54553	26100 VC-SELL/USE UNAPR LIGHT EQUIPMENT
54554	34506(F) VC-COMMRCL VEH:EQUIPMENT VIOL
54555	38026.5(B) VC-PROH OPR OFF RD VEH ON HWY
54556	38314 VC-UNSAFE TURNING MOVEMENT
54557	14 550(B)(6)(B) CA-CA REG:DRIVE VEH CARELESSLY
54558	654.5 HN-THROW/PROJECT OBJECT AT OCC/VESSEL
54559	34660(A) VC-OPR MCOP W/SUSPEND PERMIT
54560	32001(C) VC-HAZ MAT:MOTOR CARRIER DIR TRANS
54999	TRAFFIC OFFENSE

## FLORIDA

### *Overview*

The Florida dataset contained approximately 2.6 million records of DWI offenders arrested in Florida from January 1, 2001, through January 1, 2006. The dataset includes the criminal arrest histories of these offenders, including all criminal and “fingerprintable” traffic offenses. “Fingerprintable” traffic offenses are listed at the conclusion of this section. The following critical variables are included in the dataset and were used in the State data analysis: unique identifier, arrest date, and offense.

Upon cleansing the data, the dataset analyzed was comprised of 95,207 first-time DWI offenders arrested between January 1, 2005, and December 31, 2006.

Arrest was the identifying action that triggered inclusion in the analysis. This was the case for both the presenting DWI charge, as well as all prior offenses. Court actions and dispositional information was not included in this dataset.

### *Data Source*

This dataset was provided by the Florida Department of Law Enforcement (FDLE) Statistical Analysis Center; official permission to use this data for the purposes of the NHTSA Preventing First-Time DWI Offenses project was granted.

The FDLE maintains the Computerized Criminal History (CCH) records for Florida. The CCH contains transactional arrest data submitted by all Florida local and State law enforcement agencies. Only arrest events that involve fingerprinting or “booking” are included. Arrest data date back as far as 1928.

### **“Fingerprintable” Traffic Offenses**

Florida	
CD Code	Series
5405-MOVING TRAFFIC VIOL-	54
5400-TRAFFIC OFFENSE-	54
5401-HIT AND RUN-	54
5402-TRANSP DANGEROUS MATERIAL-	54
5406-NONMOVING TRAFFIC VIOL-	54
5499-TRAFFIC OFFENSE-	54

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## NEW YORK

The New York dataset contained approximately 1 million records of DUI offenders arrested in New York from January 1, 2001, through December 31, 2005. The dataset includes the criminal histories of these offenders, excluding traffic offenses. The following critical variables are included in the dataset and were used in the State data analysis: unique identifier, date of birth, gender, arrest date, and offense.

Upon cleansing the data, the dataset analyzed was comprised of 36,970 first-time DWI offenders arrested between January 1, 2005, and December 31, 2005.

Arrest was the identifying action that triggered inclusion in the analysis. This was the case for both the presenting DUI charge, as well as all prior offenses. Dispositions of offenses were not examined.

### *Data Source*

This dataset was provided by the New York State Division of Criminal Justice Services (DCJS) Bureau of Justice Research and Innovation; official permission to use this data for the purposes of the NHTSA Preventing First-Time DWI Offenses project was granted.

The DCJS maintains a statewide criminal history database that includes arrest, court and corrections data for each criminal offender who is arrested and fingerprinted in New York. Information is provided by local and State law enforcement agencies, courts and some corrections agencies. Data date back as far as 1970.

# APPENDIX B: DATA CLEANSING AND FORMATTING METHODOLOGIES

## CALIFORNIA FLORIDA NEW YORK

### California Data Cleansing and Methodology

The California dataset contained approximately 4 million records from the California Criminal History Database.

The California Dataset consisted of the following fields:

Field Name	Type	Description
CONREP-CII-OBN	Number	Unique Identification Number – Offender
DOB_Year	Number	Date of Birth Year
DOB_Month	Number	Date of Birth Month
DOB_Day	Number	Date of Birth Day
CHS-PDR-Sex	Text	Gender
CHS-PDR-Rac	Text	Race
CHS-PDR-Hgt	Number	Height
CHS-PDR-Eye-Num	Number	Eye Color
CHS-PDR-WGT-NUM	Number	Weight
CHS-CYC-DOEYY	Number	Arrest Date Year
CHS-CYC-DOE-MM	Number	Arrest Date Month
CHS-CYC-DOE-DD	Number	Arrest Date Day
CHS-SEQ-ORI-CODE	Number	Offense (numeric code)

Note: The CA dataset included a number of additional fields that were not required for the purposes of this study.

### Data Cleansing and Formatting Needs

The research team was required to perform the following actions:

- Generate criminal history and personal data files (i.e., offender demographic data) tables. This action was required to facilitate the data analysis process.
- Removal of any records for offenders who had a first-time DWI prior to 2002.
- Remove any criminal history that may have occurred after 2002.

## ***Data Cleansing and Formatting Methodology***

The following section describes the data manipulation methodology employed by the research team.

1. **Create a Criminal History Data Table** – The California data was transmitted in one flat file. In order to facilitate the data analysis processes, the research team elected to separate out Criminal History data and construct a Criminal History Table. The team ran a series of queries on the dataset and extracted all records associated with Criminal History. These records along with the California unique identifier were extracted and reassembled into a separate Criminal History Table.
2. **Create a Personal Data Record (PDR) Data Table** – The team then extracted all records associated with PDR in the consolidated California dataset. The team then reassembled these records into a separate table. The unique identifier code will serve as a link between the Criminal History and Personal Data Record tables.
3. **Flag All DUI Offenses** – In order to correctly identify only criminal history prior to the first DUI arrest the team was required to flag all DUI offenses throughout the Criminal History data table. A percentage of the population were multiple DUI offenders and in order to only pull offenses prior to the first DUI arrest it was necessary to flag all DUI arrests in each person's history.
4. **Identify the First-Time DUI Offense for Each Offender** – Using the data flags created in Step 1, the research team identified the first-time DUI offense for each unique offender. These records were then flagged.
5. **Identify Any Offenders With a DUI Offense prior to January 1, 2002** – Using a series of data queries the research team was able to identify any offenders that committed a DUI offense prior to January 1, 2002. These offenders and their corresponding criminal history were then purged from the dataset.
6. **Purge All Criminal History Data Occurring After an Offender's 'First-Time DUI' Offense in 2002 (Target Offense)** – All criminal activity occurring after a person's first-time DUI offense in 2002 was purged from the database. For example, if an individual had a first-time DUI offense on February 12, 2002, and theft offense on April 4, 2004, the theft offense was purged from the data table. This action was taken to ensure that invalid data was not accidentally included in the final analysis.
7. **Purge Noncriminal Events** – The California dataset included all "fingerprintable activities." This includes arrests for criminal activity, as well as any activity in which a person was fingerprinted (i.e., permit application). These noncriminal events were flagged and subsequently ignored when the research team performed statistical analysis of the dataset.
8. **Consolidate the Dataset** – Once a viable criminal history population was generated, the research team ran a series of queries that mapped records from the Personal Data Record table to the Criminal History table. This action ensured that the statistical team would have the necessary demographic data for analysis.
9. **Consolidate Offense Codes** – The California Criminal History data set uses a formalized offense coding system and includes 5,812 individual offense codes. In order to maximize the effectiveness of the data analysis component of the study, the research team consolidated these offenses by high level offense type into 78 more general categories. To ensure accuracy, consolidation activity leveraged the numerical codes in the dataset. For example, all codes beginning with 51 were related to Bribery. See below:

Example: The California Offense Code has 48 different codes for Bribery related offenses, see table below. The research team consolidated these into one category, Bribery, for the purposes of this exercise.

CA Offense Code	Description	Modified Offense Name
51000	BRIBERY	Bribery
51001	602 W&I-JUVENILE/BRIBERY	Bribery
51002	182 PC-CONSPIRACY/BRIBERY	Bribery
51003	664 PC-ATTEMPT CRIME/BRIBERY	Bribery
51004	67 PC-BRIBE EXECUTIVE OFFICER	Bribery
51005	671/2 PC-BRIBE PUBLIC OFFICER	Bribery
51006	68 PC-ASK/RECEIVE BRIBE	Bribery
51007	70 PC-SOLICIT/ACCEPT GRATUITY	Bribery
51008	73 PC-BUY APPOINTMENT TO OFFICE	Bribery
51009	74 PC-TAKE REWARD FOR DEPUTATION	Bribery
51010	85 PC-GIVE/OFFER BRIBE TO LEGISLATOR	Bribery
51011	86 PC-LEGISLATOR RECEIVE/ETC BRIBE	Bribery
51012	92 PC-OFFER/ETC BRIBE JUDGE/JUROR/ETC	Bribery
51013	93 PC-JUDGE/JUROR/ETC RECEIVE/ETC BRIBE	Bribery
51014	94 PC-JUDICIAL OFFICER RECEIVE/ETC BRIBE	Bribery
51015	94.5 PC-JUDICIAL OFC ACCEPT MONEY/ETC TO MARRY	Bribery
51016	95 PC-INFLUENCE JUROR/ETC	Bribery
51017	97 PC-JUDGE/CONSTABLE PURCHASE JUDGMENT	Bribery
51018	1361/2 PC-BRIBE TO DISSUADE WITNESS	Bribery
51019	137 PC-BRIBE TO INFLUENCE TESTIMONY	Bribery
51020	138 PC-WITNESS RECEIVE/ETC BRIBE	Bribery
51021	165 PC-BRIBE PUBLIC OFFICIAL	Bribery
51022	337 PC-ASK/TAKE BRIBE FROM VIOLATOR	Bribery
51023	337B PC-OFFER BRIBE TO SPORT CONTESTANT	Bribery
51024	337C PC-SPORT CONTESTANT ACCEPT BRIBE	Bribery
51025	337D PC-OFFER BRIBE TO UMPIRE/ETC	Bribery
51026	337E PC-UMPIRE/ETC ACCEPT BRIBE	Bribery
51027	639 PC-BRIBE EMPLOYEE TO OBTAIN LOAN	Bribery
51028	639A PC-EMPLOYEE TAKE LOAN COMMISSION	Bribery
51029	641 PC-BRIBE TEL/TEL AGENT TO DISCLOSE MESSAGE	Bribery
51030	6531/2 PC-APPRAISER ACCEPT EXTRA FEE	Bribery
51031	671/2 PC-BRIBE PUBLIC OFFICER	Bribery
51032	137(A) PC-INFLUENCE TESTIMONY BY BRIBE	Bribery
51033	137(B) PC-INDUCE FALSE TESTIMONY BY FORCE/ETC	Bribery
51034	137(C) PC-INDUCE FALSE TESTIMONY	Bribery
51035	137 PC-BRIBE TO INFLUENCE TESTIMONY	Bribery
51036	67.5 PC-BRIBE PUBLIC OFFICER	Bribery
51037	67.5 PC-BRIBE PUBLIC OFFICER	Bribery
51038	653.5 PC-APPRAISER ACCEPT EXTRA FEE	Bribery
51039	138(B) PC-WITNESS RECEIVE/ETC BRIBE	Bribery
51040	138(A) PC-BRIBE WITNESS:DISSUADE ATTEND TRIAL	Bribery
51041	641.3(A) PC-COMMERCIAL BRIBERY	Bribery
51042	641.3(A) PC-COMMERCIAL BRIBERY	Bribery
51043	67.5(B) PC-BRIBE PUBLIC OFFICER/ETC	Bribery
51044	67.5(A) PC-BRIBE PUBLIC OFFICER/ETC	Bribery
51045	18 201 US-PUB OFFICIAL/WITNESS GIVE/TAKE BRIBE	Bribery
51046	70(A) PC-ASK/GET/ETC GRATUITY/ETC:OFCL ACT	Bribery
51999	BRIBERY	Bribery

10. **Format Dataset for SPSS Analysis** – In order to more effectively analyze the information using the statistical program SPSS, the research team was required to reformat the dataset by individual rather than the native record.

ID	Date	Offense
21486652	11/24/1991	Trespass
21486652	5/3/2002	Burglary
21486652	11/13/2002	DUI



ID	Date	Offense	Date	Offense	Date	Offense
21486652	11/24/1991	Trespass	5/3/2002	Burglary	11/13/2002	DUI



## Florida Data Cleansing and Formatting Methodology

The Florida dataset contained 2.65 million records from the Florida Criminal History Database.

### The Florida Dataset consisted of the following fields:

Field Name	Type	Description
ID	Number	Unique identifier (numerical) for each offender in the dataset.
TARGET_DATE	Date	Date of DUI arrest, between January 1, 2001, and December 31, 2006. This serves as the flag arrest – the arrest that resulted in being included in the population.
ARR_ARREST	Date	Date of offense record arrest
ARR_AGENCY_ID	Text	Arresting municipality
ARR_OFF_LIT	Text	Comment field for arrest record
ARR_FLA_STA	Text	FL statute codes – in some cases can be used as a secondary DUI flag
ARR_DISP_CD_1	Text	Identifies whether offender was held, transferred, etc. (incomplete data)
ARR_OFF_CD	Text	Offense Code – using Floridas offense code library. Data contains numerical code along with a short text description of the offense.
ARR_COUNTY	Text	Arresting County
ARR_OFF_DT	Text/Date	Secondary arrest date field (data not used in evaluation)
ARR_CNT	Number	Count of charges for each offense record (data not used in evaluation)
ARR_CHG_DEG	Text	Degree of charge (ex. second degree weapons violation). Data incomplete.
ARR_CHG_LVL	Text	Identifies felony versus misdemeanor. Data incomplete.

### Data Cleansing and Formatting Needs

The research team identified one cleansing and formatting issue in regards to the Florida data.

- The Florida data uses a uniform offense code which aids in the categorization process; however, there were some DUI offenses that needed to be flagged by a secondary identification field.

### Data Cleansing and Formatting Methodology

The following section describes the data manipulation methodology employed by the research team.

1. **Create a Numerical Unique ID** – The team created an auto number unique ID for each record. The use of a numerical ID will result in query performance improvements.
2. **Flag all DUI Offenses** – In order to correctly identify only criminal history prior to the first DUI arrest the team was required to flag all DUI offenses throughout the database. A percentage of the population were multiple DUI offenders and in order to only pull offenses prior to the first DUI arrest it was necessary to flag all DUI arrests in each individuals history.

Data was flagged using the following characteristics:

1. Offense codes, 5403, 5404, 5407 (all DUI-related)
  2. Arrest Comments, search for “DWI” and “DUI”
  3. Municipal statutes, FL316.193 – DUI/DWI statute
3. **Determine if First-Time DUI Offense Occurred Between January 1, 2005, and December 31, 2006** – Once all DUI offenses have been flagged, the research team ran a query to identify the date of the first DUI offense for each offender.

If an offender’s first DUI offense occurred between January 1, 2005, and December 31, 2006, then the offender was retained in the population. If a prior DUI offense was identified that offender was not included in the population.

For example:

Offense ID	ID	ARR_ARREST_DT	ARR_OFF_CD	DUI Arrest
148	15450	11/24/1991	5499-TRAFFIC OFFENSE-	1
150	15450	5/3/2005	5499-TRAFFIC OFFENSE-	1
160	15450	12/13/2006	5499-TRAFFIC OFFENSE-	1

In this case the 11/24/1991 offense was the First DUI Offense date for Offender 15450. Offender 15450 would then be removed from the population.

ID	FirstOfARR_ARREST_DT
6888	4/13/1993
7022	8/19/2003
10016	7/21/2001
11050	4/24/1999
15450	11/24/1991
15898	5/31/1994

4. **Generate Valid Population** – Using the results in Step 3, the valid population was created for use in the statistical analysis. Again, this population consists of all offenders that had a first-time DUI offense between January 1, 2005, and December 31, 2006. Included in this data was each first-time DUI offender’s entire Florida criminal history.
5. **Consolidate Offense Codes** – The Florida Criminal History Database uses a formalized offense coding system. An analysis of the data received from Florida revealed 439 unique offense codes. In order to maximize the effectiveness of the data analysis component of the study, the research team consolidated these offenses by high-level offense type into 65 more general categories. To ensure accuracy, consolidation activity leveraged the numerical codes in the dataset. For example, all codes beginning with 23 were related to Larceny. See below:

Example: The Florida Offense Code has 14 different codes for larceny, see table below. The research team consolidated these into one category, larceny for the purposes of this exercise.

CD Code	Series	Description
2300-LARC-	23	LARC-
2301-POCKETPICKING-	23	LARC-
2302-PURSE SNATCHING-NO FORCE-	23	LARC-
2303-SHOPLIFTING-	23	LARC-
2304-LARC-PARTS FROM VEH-	23	LARC-
2305-LARC-FROM AUTO-	23	LARC-
2306-LARC-FROM SHIPMENT-	23	LARC-
2307-LARC-FROM COIN MACHINE-	23	LARC-
2308-LARC-FROM BLDG-	23	LARC-
2309-LARC-FROM YARDS-	23	LARC-
2311-LARC-FROM BANKING-TYPE INST-	23	LARC-
2312-LARC-FROM INTERSTATE SHIPMENT-	23	LARC-
2314-THEFT OF US GOVT PROP-	23	LARC-
2399-LARCENY-	23	LARC-

6. **Format Dataset for SPSS Analysis** – In order to more effectively analyze the information using the statistical program SPSS the Maryn team was required to reformat the dataset by individual rather than the native record. See example below:

ID	Date	Offense
12980	11/24/1991	ASSAULT-
12980	5/3/2005	LARC-
12980	12/13/2006	DUI-



ID	Date	Offense	Date	Offense	Date	Offense
12980	11/24/1991	ASSAULT-	5/3/2005	LARC-	12/13/2006	DUI-

## New York Data Cleansing and Formatting Methodology

The New York dataset contained approximately 1 million records from the New York Criminal History Database.

**The New York Dataset consisted of the following fields:**

Variable	Label / Description
NYSID	Case id in lieu of NYSID
EVDATE	CCH event date
X1MO	date of birth month
X1DAY	date of birth day
X1YR	date of birth year
X2	age at arrest
X3	gender of offender
X4	race of offender
X5	Hispanic indicator
X6	cohort indicator
X7	# of prior fel arrs
X8	# of prior misdems arrs
X9	# of prior fel convs
X10	# of prior misdems convs
X11	# of prior YO fel adjud
X12	# of prior YO misdems adjud
X13	# of prior JO-JD fel arrs
X14	# of prior JO-JD fel convs
X16MO	arrest date month
X16DAY	arrest date day
X16YR	arrest date year
X18	sequence # of event
X22	county of arrest
x22a	geog. region of arrest
x22b	eco. region of arrest
X28	arrest chg class-category
X30	arrest chg UCR code
X31	VFO arrest indicator
X32	firearm arrest indicator
X33	child victim arrest indicator
X34	drug arrest indicator
X35	weapon arrest indicator
X36	DWI arrest indicator
nchgs	Number of charges
cucr1 to 50	Prior Charge 1 through 50

### *Data Cleansing and Formatting Needs*

The Research Team was required to cleanse any data and remove any offenders that had a first-time DUI prior to 2005.

## Data Cleansing and Formatting Methodology

The following section describes the data manipulation methodology employed by the research team.

1. **Flag all DUI Offenses** – In order to correctly identify only criminal history prior to the first DUI arrest the team was required to flag all DUI offenses throughout the database. A percentage of the population were multiple DUI offenders and in order to only pull offenses prior to the first DUI arrest it was necessary to flag all DUI arrests in each individuals history.
2. **Identify the First-Time DUI Offense for Each Offender** – Using the data flags created in Step 1, the research team identified the first-time DUI offense for each unique offender. These records were then flagged.
3. **Identify Any Offenders With a DUI Offense Prior to January 1, 2005** – Using a series of data queries the research team was able to identify any offenders that committed a DUI offense prior to January 1, 2005. These offenders, and their corresponding criminal history were then purged from the dataset.
4. **Consolidate Offense Codes** - The information received from New York incorporated high-level criminal offense codes for 43 offenses, such as embezzlement, fraud, and arson. As a result, the research team did not perform any offense consolidation activity. The native format of the data met the needs of this study.
5. **Format Dataset for SPSS Analysis** – In order to more effectively analyze the information using the statistical program SPSS the Maryn Team was required to reformat the dataset by individual rather than the native record.

ID	Date	Offense
10028240	11/24/1991	larceny
10028240	5/3/2005	Drug possession
10028240	12/13/2006	DWI



ID	Date	Offense	Date	Offense	Date	Offense
10028240	11/24/1991	larceny	5/3/2005	Drug possession	12/13/2006	DWI

## APPENDIX C: STATE DATA FREQUENCY TABLES

### CALIFORNIA FLORIDA NEW YORK

#### California Frequency Tables

**California Table 1 - Prior Offenses for First-Time DWI Offenders**

Offense Type	#	Total %	% of Those With Priors	Offense Type	#	Total %	% of Those With Priors
Narcotics Offense	22,520	16.3%	38.7%	Homicide/Manslaughter	999	0.7%	1.7%
Assault/Battery	17,668	12.7%	30.4%	Civil Rights Violation	942	0.7%	1.6%
Larceny	14,127	10.2%	24.3%	Credit Card Offense	803	0.6%	1.4%
Traffic Offense	11,762	8.5%	20.2%	Impersonation	629	0.5%	1.1%
Public Justice	11,472	8.3%	19.7%	Escape/Flee	610	0.4%	1.0%
Family Offense	10,878	7.8%	18.7%	School Disturbance	599	0.4%	1.0%
Obstruction of Justice	10,467	7.6%	18.0%	Kidnapping	567	0.4%	1.0%
Burglary	10,146	7.3%	17.4%	Health and Safety	480	0.3%	0.8%
Weapon Offense	8,607	6.2%	14.8%	Improper Business Practice	409	0.3%	0.7%
Stolen Property	7,111	5.1%	12.2%	Embezzlement	380	0.3%	0.7%
Property Damage	6,253	4.5%	10.7%	Immigration Violation	249	0.2%	0.4%
Public Peace Violation	5,213	3.8%	9.0%	Election Law Violation	229	0.2%	0.4%
Stolen Vehicle	5,190	3.7%	8.9%	Smuggling	229	0.2%	0.4%
Robbery	3,928	2.8%	6.8%	Conservation	166	0.1%	0.3%
Trespass	3,805	2.7%	6.5%	Cruelty to Animals	147	0.1%	0.3%
Public Intoxication	3,466	2.5%	6.0%	Gambling	100	0.1%	0.2%
Forgery	2,903	2.1%	5.0%	Extortion	91	0.1%	0.2%
Terrorist Threats/Stalking	2,841	2.1%	4.9%	Invasion of Privacy	60	0.0%	0.1%
Fraud	2,367	1.7%	4.1%	Obscene Matter	36	0.0%	0.1%
Sex Offense	2,280	1.6%	3.9%	Bribery	30	0.0%	0.1%
Liquor Offense	1,814	1.3%	3.1%	Military Offense	17	0.0%	0.0%
Local Ordinance	1,533	1.1%	2.6%	Anti-Trust Violation	5	0.0%	0.0%
Commercial Sex	1,237	0.9%	2.1%	Abortion	2	0.0%	0.0%
Sexual Assault	1,157	0.8%	2.0%	Libel/Slander	1	0.0%	0.0%
Juvenile Offense	1,007	0.7%	1.7%				

### California Frequency Tables, cont.

California Table 2 – Number of Prior Drug Arrests			
Number of Prior Drug Arrests	#	Total %	% of Those With Priors
1 Prior	10,759	7.8%	18.5%
2 Priors	4,516	3.3%	7.8%
3 Priors	2,521	1.8%	4.3%
4 Priors	1,753	1.3%	3.0%
5 Priors	1,121	0.8%	1.9%
6 Priors	786	0.6%	1.4%
7 Priors	511	0.4%	0.9%
8 Priors	311	0.2%	0.5%
9 Priors	169	0.1%	0.3%
10+ Priors	73	0.1%	0.1%
Total	22,520	16.3%	38.7%

California Table 3 – Number of Prior Assault Arrests		
Number of Prior Assault Arrests	#	% of Those With PriorsTotal %
1 Prior	11,273	19.4%8.1%
2 Priors	3,826	6.6%2.8%
3 Priors	1,455	2.5%1.0%
4 Priors	629	1.1%0.5%
5 Priors	295	0.5%0.2%
6 Priors	138	0.2%0.1%
7 Priors	34	0.1%0.0%
8 Priors	14	0.0%0.0%
9 Priors	3	0.0%0.0%
10+ Priors	1	0.0%0.0%
Total	17,668	30.4%12.7%

California Table 4 – Number of Larceny/Theft Arrests			
Number of Prior Theft Arrests	#	Total %	% of Those With Priors
1 Prior	10,418	7.5%	17.9%
2 Priors	3,650	2.6%	6.3%
3 Priors	1,597	1.2%	2.7%
4 Priors	770	0.6%	1.3%
5 Priors	392	0.3%	0.7%
6 Priors	188	0.1%	0.3%
7 Priors	113	0.1%	0.2%
8 Priors	32	0.0%	0.1%
9 Priors	16	0.0%	0.0%
10+ Priors	7	0.0%	0.0%
Total	17,183	12.4%	29.5%

California Table 5 – Number of Prior Traffic Arrests			
Number of Prior Traffic Arrests	#	Total %	% of Those With Priors
1 Prior	8,701	6.3%	15.0%
2 Priors	2,026	1.5%	3.5%
3 Priors	660	0.5%	1.1%
4 Priors	224	0.2%	0.4%
5 Priors	82	0.1%	0.1%
6 Priors	42	0.0%	0.1%
7 Priors	17	0.0%	0.0%
8 Priors	8	0.0%	0.0%
9 Priors	1	0.0%	0.0%
10+ Priors	1	0.0%	0.0%
Total	11,762	8.5%	20.2%

## Florida Frequency Tables

Florida Table 1 - Prior Offenses for First-Time DWI Offenders							
Offense Type	#	Total %	% of Those With Priors	Offense Type	#	Total %	% of Those With Priors
Dangerous Drugs – Possession	15,481	16.3%	37.2%	Dangerous Drugs - Traffic	606	0.6%	1.5%
Battery	14,265	15.0%	34.3%	Obstruct - Justice	558	0.6%	1.3%
Larceny	12,055	12.7%	29.0%	Sex Assault	532	0.6%	1.3%
Obstruct - Probation Violation	10,937	11.5%	26.3%	Flee/Elude Police	457	0.5%	1.1%
Resisting Officer	9,469	9.9%	22.7%	Homicide	429	0.5%	1.0%
Traffic Offense - Nonmoving Violation	8,593	9.0%	20.6%	Smuggle Contraband	366	0.4%	0.9%
Burglary	7,491	7.9%	18.0%	Dangerous Drugs - MFR	344	0.4%	0.8%
Obstruct - Failure to Appear	7,406	7.8%	17.8%	Stalking	329	0.3%	0.8%
Criminal Registration	5,966	6.3%	14.3%	Health Safety	292	0.3%	0.7%
Assault	5,093	5.3%	12.2%	Conservation	289	0.3%	0.7%
Fraud	4,542	4.8%	10.9%	Arson	236	0.2%	0.6%
Divulge Eaves Drop	4,099	4.3%	9.8%	Obstruct - Release Violation	205	0.2%	0.5%
Weapon Offense	3,731	3.9%	9.0%	0000 Series	188	0.2%	0.5%
Public Peace - Disorderly Conduct	3,472	3.6%	8.3%	Sex Offender Registration	164	0.2%	0.4%
Damage Property	3,152	3.3%	7.6%	Obstruct - Parole Violation	152	0.2%	0.4%
Theft and Sale Vehicle	3,092	3.2%	7.4%	Gambling	144	0.2%	0.3%
Obstruct - Contempt of Court	2,969	3.1%	7.1%	Municipal/County Offenses	118	0.1%	0.3%
Public Peace	2,613	2.7%	6.3%	Obstruct	114	0.1%	0.3%
Traffic Offense	2,568	2.7%	6.2%	Keeping House III	85	0.1%	0.2%
Robbery	2,401	2.5%	5.8%	Dangerous Drugs - Smuggling	64	0.1%	0.2%
Public Peace – Intoxication	2,176	2.3%	5.2%	Public Peace - Riot	55	0.1%	0.1%
Dangerous Drugs – Sell	1,970	2.1%	4.7%	Threat Bomb	51	0.1%	0.1%
Municipal Ordinance	1,849	1.9%	4.4%	Drunkenness	50	0.1%	0.1%
Traffic Offense - Moving Violation	1,844	1.9%	4.4%	Vagrancy	48	0.1%	0.1%
Stolen Property	1,819	1.9%	4.4%	Obstruct - Perjury	43	0.0%	0.1%
Forgery	1,691	1.8%	4.1%	Obscene Material	42	0.0%	0.1%
Dangerous Drugs	1,650	1.7%	4.0%	Morals Decency Crime	36	0.0%	0.1%
Liquor	1,625	1.7%	3.9%	Extortion	36	0.0%	0.1%
Family Offense	1,425	1.5%	3.4%	Obstruct - Bail	32	0.0%	0.1%
Escape	1,325	1.4%	3.2%	Bribe Giving	31	0.0%	0.1%
Obstruct – Leo	1,245	1.3%	3.0%	Desertion	24	0.0%	0.1%
Traffic Offense - Hit and Run	1,231	1.3%	3.0%	Federal Charge Violation	15	0.0%	0.0%
County Ordinance violation	1,151	1.2%	2.8%	Tax Revenue	6	0.0%	0.0%
Property Crimes	977	1.0%	2.3%	Embezzle	6	0.0%	0.0%
Public Order Crime	970	1.0%	2.3%	Career Offender Registration	6	0.0%	0.0%
Sex Offense	855	0.9%	2.1%	Fail to Register as Criminal Reg	6	0.0%	0.0%
Dangerous Drugs – Distribution	834	0.9%	2.0%	Fail to Register as Sex Predator	5	0.0%	0.0%
Obstruct - Bond	749	0.8%	1.8%	Immigration	3	0.0%	0.0%
Kidnapping	722	0.8%	1.7%	Election Laws	1	0.0%	0.0%
Prostitution	628	0.7%	1.5%	Failure to Register as Career Offender	1	0.0%	0.0%
Crimes Against Person	610	0.6%	1.5%				



<b>Florida Table 2 – Number of Prior Arrests</b>			
Number of Prior Arrests in Florida	#	Total %	% of Those With Priors
1 Prior	14,524	15.3%	34.9%
2 Priors	6,975	7.3%	16.8%
3 Priors	4,264	4.5%	10.2%
4 Priors	2,840	3.0%	6.8%
5 Priors	2,088	2.2%	5.0%
6 Priors	1,690	1.8%	4.1%
7 Priors	1,441	1.5%	3.5%
8 Priors	1,120	1.2%	2.7%
9 Priors	898	0.9%	2.2%
10 Priors	810	0.9%	1.9%
11 Priors	688	0.7%	1.7%
12 Priors	592	0.6%	1.4%
13 Priors	501	0.5%	1.2%
14 Priors	420	0.4%	1.0%
15 or More Priors	2,772	2.9%	6.7%
<b>Total</b>	<b>41,623</b>	<b>43.7%</b>	<b>100%</b>

<b>Florida Table 3 – Number of Prior Drug Arrests</b>			
Number of Prior Drug Arrests	#	Total %	% of Those With Priors
1 Prior	9,220	9.7%	22.2%
2 Priors	3,316	3.5%	8.0%
3 Priors	1,621	1.7%	3.9%
4 Priors	918	1.0%	2.2%
5 Priors	514	0.5%	1.2%
6 Priors	338	0.4%	0.8%
7 Priors	192	0.2%	0.5%
8 Priors	101	0.1%	0.2%
9 Priors	45	0.0%	0.1%
10 Priors	36	0.0%	0.1%
11 Priors	18	0.0%	0.0%
12 Priors	8	0.0%	0.0%
13 Priors	2	0.0%	0.0%
14 Priors	1	0.0%	0.0%
15 or More Priors	0	0.0%	0.0%
<b>Total</b>	<b>16,330</b>	<b>17.2%</b>	<b>39.2%</b>

<b>Florida Table 4 – Number of Prior Traffic Arrests</b>			
Number of Prior Traffic Arrests	#	Total %	% of Those With Priors
1 Prior	8,066	8.5%	19.4%
2 Priors	2,142	2.2%	5.1%
3 Priors	857	0.9%	2.1%
4 Priors	354	0.4%	0.9%
5 Priors	147	0.2%	0.4%
6 Priors	68	0.1%	0.2%
7 Priors	30	0.0%	0.1%
8 Priors	12	0.0%	0.0%
9 Priors	8	0.0%	0.0%
10 Priors	4	0.0%	0.0%
11 Priors	1	0.0%	0.0%
12 Priors	0	0.0%	0.0%
13 Priors	0	0.0%	0.0%
14 Priors	0	0.0%	0.0%
15 or More Priors	0	0.0%	0.0%
<b>Total</b>	<b>11,689</b>	<b>12.3%</b>	<b>28.1%</b>

### Florida Frequency Tables, cont.

Florida Table 5 – Number of Prior Assault Arrests			
Number of Prior Assault or Battery Arrests	#	Total %	% of Those With Priors
1 Prior	10,288	10.8%	24.7%
2 Priors	3,394	3.6%	8.2%
3 Priors	1,446	1.5%	3.5%
4 Priors	656	0.7%	1.6%
5 Priors	331	0.3%	0.8%
6 Priors	143	0.2%	0.3%
7 Priors	81	0.1%	0.2%
8 Priors	34	0.0%	0.1%
9 Priors	21	0.0%	0.1%
10 Priors	9	0.0%	0.0%
11 Priors	3	0.0%	0.0%
12 Priors	1	0.0%	0.0%
13 Priors	0	0.0%	0.0%
14 Priors	0	0.0%	0.0%
15 or More Priors	0	0.0%	0.0%
Total	16,407	17.2%	39.4%

Florida Table 6 – Number of Prior Theft Arrests			
Number of Prior Theft Arrests	#	Total %	% of Those With Priors
1 Prior	8,070	8.5%	19.4%
2 Priors	2,693	2.8%	6.5%
3 Priors	1,301	1.4%	3.1%
4 Priors	636	0.7%	1.5%
5 Priors	408	0.4%	1.0%
6 Priors	213	0.2%	0.5%
7 Priors	141	0.1%	0.3%
8 Priors	94	0.1%	0.2%
9 Priors	47	0.0%	0.1%
10 Priors	34	0.0%	0.1%
11 Priors	19	0.0%	0.0%
12 Priors	10	0.0%	0.0%
13 Priors	4	0.0%	0.0%
14 Priors	1	0.0%	0.0%
15 or More Priors	0	0.0%	0.0%
Total	13,671	14.4%	32.8%

## New York Frequency Tables

<b>New York Table 1 - Prior Offenses for First-Time DWI Offenders</b>			
Offense Type	#	Total %	% of Those With Priors
Other-Finger Printable Offense	4,457	12.1%	45.1%
Simple Assault	4,298	11.6%	43.5%
Disorderly Conduct	3,536	9.6%	35.8%
Larceny	3,481	9.4%	35.2%
Possession – Marijuana	2,609	7.1%	26.4%
Criminal Mischief	2,485	6.7%	25.1%
Possession – Other	2,466	6.7%	24.9%
Aggravated Assault	2,000	5.4%	20.2%
Stolen Property	1,919	5.2%	19.4%
Dangerous Weapons	1,825	4.9%	18.5%
Other, Non-Traffic	1,539	4.2%	15.6%
Burglary	1,533	4.1%	15.5%
Fraud	1,317	3.6%	13.3%
Robbery	985	2.7%	10.0%
Motor Vehicle Theft	791	2.1%	8.0%
Sale – Other	785	2.1%	7.9%
Forgery	742	2.0%	7.5%
Sex Offenses	535	1.4%	5.4%
Sale – Marijuana	402	1.1%	4.1%
Possession Burglary Tools	367	1.0%	3.7%
Loitering	338	0.9%	3.4%
Possession – Narcotics	299	0.8%	3.0%
UUV	289	0.8%	2.9%
Kidnapping	214	0.6%	2.2%
Liquor Law Violations	148	0.4%	1.5%
Murder	136	0.4%	1.4%
Forcible Rape	127	0.3%	1.3%
Sale – Narcotics	115	0.3%	1.2%
Prostitution – Patronizing	108	0.3%	1.1%
Arson	69	0.2%	0.7%
Coercion	66	0.2%	0.7%
Gambling – Other	66	0.2%	0.7%
Prostitution	55	0.1%	0.6%
Non-Negligent Manslaughter	36	0.1%	0.4%
Offense Against Family	35	0.1%	0.4%
Bribery	26	0.1%	0.3%
Prostitution – Promote	26	0.1%	0.3%
Gambling – Books	25	0.1%	0.3%
Possession – Synthetics	24	0.1%	0.2%
Extortion	20	0.1%	0.2%
Gambling – Numbers	14	0.0%	0.1%
Negligent Manslaughter	10	0.0%	0.1%
Sale – Synthetics	9	0.0%	0.1%

## New York Frequency Tables, cont.

New York Table 2 – Number of Prior Arrests			
Prior Arrests in Alabama Since 1996	#	Total % <sup>2</sup>	% of Those With Priors
1 Prior	3,722	10.1%	37.6%
2 Priors	1,869	5.1%	18.9%
3 Priors	1,093	3.0%	11.1%
4 Priors	718	1.9%	7.3%
5 Priors	487	1.3%	4.9%
6 Priors	351	0.9%	3.5%
7 Priors	294	0.8%	3.0%
8 Priors	237	0.6%	2.4%
9 Priors	164	0.4%	1.7%
10 Priors	160	0.4%	1.6%
11 Priors	123	0.3%	1.2%
12 Priors	128	0.3%	1.3%
13 Priors	71	0.2%	0.7%
14 Priors+	471	1.3%	4.7%
Total	9,862	26.7%	100%

New York Table 3 – Number of Prior Drug Arrests		
Prior Drug Arrests	#	% of Those With PriorsTotal %
1 Prior	2,468	25.0%6.7%
2 Priors	778	7.9%2.1%
3 Priors	432	4.4%1.2%
4 Priors	228	2.3%0.6%
5 Priors	121	1.2%0.3%
6 Priors	81	0.8%0.2%
7 Priors	38	0.4%0.1%
8 Priors+	13	0.1%0.0%
Total	4,159	42.2%11.2%

New York Table 4 – Number of Theft Arrests			
Prior Traffic Arrests	#	Total %	% of Those With Priors
1 Prior	2,508	6.8%	25.4%
2 Priors	883	2.4%	8.9%
3 Priors	410	1.1%	4.1%
4 Priors	231	0.6%	2.3%
5 Priors	112	0.3%	1.1%
6 Priors	52	0.1%	0.5%
7 Priors	24	0.1%	0.2%
8 Priors+	7	<0.1%	0.1%
Total	4,227	11.4%	42.9%

New York Table 5 – Number of Prior Assault Arrests			
Prior Assault Arrests	#	Total %	% of Those With Priors
1 Prior	2,624	7.1%	26.5%
2 Priors	1,020	2.8%	10.3%
3 Priors	496	1.3%	5.0%
4 Priors	217	.6%	2.2%
5 Priors	120	.3%	1.2%
6 Priors	68	.2%	0.7%
7 Priors	22	.1%	0.2%
8 Priors+	13	<.1%	0.1%
Total	4,580	12.4%	46.4%

## APPENDIX D: STATE DWI LAWS

### CALIFORNIA FLORIDA NEW YORK

#### California

##### SECTION 13350-13392

13350. (a) The department immediately shall revoke the privilege of any person to drive a motor vehicle upon receipt of a duly certified abstract of the record of any court showing that the person has been convicted of any of the following crimes or offenses:

(1) Failure of the driver of a vehicle involved in an accident resulting in injury or death to any person to stop or otherwise comply with Section 20001.

(2) Any felony in the commission of which a motor vehicle is used, except as provided in Section 13351, 13352, or 13357.

(3) Reckless driving causing bodily injury. (b) If a person is convicted of a violation of Section 23152 punishable under Section 23170, 23175, or 23175.5, or a violation of Section 23153 punishable under Section 23190, including a violation of paragraph (3) of subdivision (c) of Section 192 of the Penal Code as provided in Section 193.7 of that code, the court shall, at the time of surrender of the driver's license or temporary permit, require the defendant to sign an affidavit in a form provided by the department acknowledging his or her understanding of the revocation required by paragraph (5), (6), or (7) of subdivision (a) of Section 13352, and an acknowledgment of his or her designation as an habitual traffic offender. A copy of this affidavit shall be transmitted, with the license or temporary permit, to the department within the prescribed 10 days. (c) The department shall not reinstate the privilege revoked under subdivision (a) until the expiration of one year after the date of revocation and until the person whose privilege was revoked gives proof of financial responsibility as defined in Section 16430.

13350. (a) The department immediately shall revoke the privilege of any person to drive a motor vehicle upon receipt of a duly certified abstract of the record of any court showing that the person has been convicted of any of the following crimes or offenses:

(1) Failure of the driver of a vehicle involved in an accident resulting in injury or death to any person to stop or otherwise comply with Section 20001.

(2) Any felony in the commission of which a motor vehicle is used, except as provided in Section 13351, 13352, or 13357.

(3) Reckless driving causing bodily injury. (b) If a person is convicted of a violation of Section 23152 punishable under Section 23546, 23550, or 23175.5, or a violation of Section 23153 punishable under Section 23566, including a violation of paragraph (3) of subdivision (c) of Section 192 of the Penal Code as provided in Section 193.7 of that code, the court shall, at the time of surrender of the driver's license or temporary permit, require the defendant to sign an affidavit in a form provided by the department acknowledging his or her understanding of the revocation required by paragraph (5), (6), or (7) of subdivision (a) of Section 13352, and an acknowledgment of his or her designation as an habitual traffic offender. A copy of this affidavit shall be transmitted, with the license or temporary permit, to the department within the prescribed 10 days. (c) The department shall not reinstate the privilege revoked under subdivision (a) until the expiration of one year after the date

of revocation and until the person whose privilege was revoked gives proof of financial responsibility as defined in Section 16430.

13350.5. Notwithstanding Section 13350, for the purposes of this article, conviction of a violation of paragraph (3) of subdivision (c) of Section 192 of the Penal Code is a conviction of a violation of Section 23153.

13350.5. Notwithstanding Section 23522 or 23590, for the purposes of this article, conviction of a violation of paragraph (3) of subdivision (c) of Section 192 of the Penal Code is a conviction of a violation of Section 23153.

13351. (a) The department immediately shall revoke the privilege of any person to drive a motor vehicle upon receipt of a duly certified abstract of the record of any court showing that the person has been convicted of any of the following crimes or offenses:

(1) Manslaughter resulting from the operation of a motor vehicle, except when convicted under paragraph

(2) of subdivision (c) of Section 192 of the Penal Code. (2) Conviction of three or more violations of Section 20001, 20002, 23103, or 23104 within a period of 12 months from the time of the first offense to the third or subsequent offense, or a combination of three or more convictions of violations within the same period.

(3) Violation of Section 191.5 of the Penal Code or of Section 2800.3 causing serious bodily injury resulting in a serious impairment of physical condition, including, but not limited to, loss of consciousness, concussion, serious bone fracture, protracted loss or impairment of function of any bodily member or organ, and serious disfigurement. (b) The department shall not reinstate the privilege revoked under subdivision (a) until the expiration of three years after the date of revocation and until the person whose privilege was revoked gives proof of financial responsibility, as defined in Section 16430.

13351.5. (a) Upon receipt of a duly certified abstract of the record of any court showing that a person has been convicted of a felony for a violation of Section 245 of the Penal Code and that a vehicle was found by the court to constitute the deadly weapon or instrument used to commit that offense, the department immediately shall revoke the privilege of that person to drive a motor vehicle. (b) The department shall not reinstate a privilege revoked under subdivision (a) under any circumstances. (c) Notwithstanding subdivision (b), the department shall terminate any revocation order issued under this section on or after January 1, 1995, for a misdemeanor conviction of violating Section 245 of the Penal Code.

13352. (a) The department shall immediately suspend or revoke, or record the court-administered suspension or revocation of, the privilege of any person to operate a motor vehicle upon receipt of a duly certified abstract of the record of any court showing that the person has been convicted of a violation of Section 23152 or 23153 or subdivision (a) of Section 23109, or upon receipt of a report of a judge of the juvenile court, a juvenile traffic hearing officer, or a referee of a juvenile court showing that the person has been found to have committed a violation of Section 23152 or 23153 or subdivision (a) of Section 23109. If any offense in this section occurs in a vehicle defined in Section 15210, the suspension or revocation specified below shall apply to the noncommercial driving privilege. The commercial driving privilege shall be disqualified as specified in Section 15300. For purposes of this section, suspension or revocation shall be as follows:

(1) Upon a conviction or finding of a violation of Section 23152 punishable under Section 23160, the privilege shall be suspended for a period of six months if the court orders the department to suspend the privilege, or if the court does not grant probation. If the person gives proof of ability to respond in damages as defined in Section 16430, the department shall issue the restricted license upon receipt of an abstract of record from the court pursuant to Section 1803 certifying that the court has granted probation to the person on conditions which include the condition specified in subdivision (b) of Section 23161. The privilege shall not be reinstated until the person gives proof of ability to respond in damages and gives proof satisfactory to the department of successful completion of a program described in Section 23161.

(2) Upon a conviction or finding of a violation of Section 23153 punishable under Section 23180, the privilege shall be suspended for a period of one year. The privilege shall not be reinstated until the person gives proof of ability to respond in damages and gives proof satisfactory to the department of successful completion of a program described in Section 23161.

(3) Except as provided in Section 13352.5, upon a conviction or finding of a violation of Section 23152 punishable under Section 23165, the privilege shall be suspended for 18 months. The privilege shall not be reinstated until the person gives proof of ability to respond in damages and gives proof satisfactory to the department of successful completion of a program described in Section 23166.

(4) Except as provided in Section 13352.5, upon a conviction or finding of a violation of Section 23153 punishable under Section 23185, the privilege shall be revoked for a period of three years. The privilege shall not be reinstated until evidence satisfactory to the department establishes that no grounds exist which would authorize the refusal to issue a license and until the person gives proof of ability to respond in damages, and until the person gives proof satisfactory to the department of successful completion of a program described in Section 23166.

(5) Upon a conviction or finding of a violation of Section 23152 punishable under Section 23170, the privilege shall be revoked for a period of three years. The privilege shall not be reinstated until the person files proof of ability to respond in damages and gives proof satisfactory to the department of successful completion, subsequent to the most recent underlying conviction, of one of the following programs: an 18-month program or, if available in the county of the person's residence or employment, a 30-month program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code, or a program specified in Section 8001 of the Penal Code. The court shall advise the person at the time of sentencing that completion of one of the programs authorized by this paragraph is required in order to become eligible for a California driver's license. The court shall also advise the person that after the completion of 24 months of the revocation period, the person may apply to the court for an order granting a restricted driver's license, subject to the following conditions: (A) The person has satisfactorily completed, subject to the current underlying conviction, either of the following: (i) A licensed 18-month program pursuant to Section 11836 of the Health and Safety Code. (ii) The initial 18 months of a licensed 30-month program, if available in the county of the person's residence or employment, pursuant to Section 11836 of the Health and Safety Code. (B) The person agrees, as a condition of the restriction, to continue satisfactory participation in the 30-month program, if applicable, and to have installed and maintained, as described in Section 23246, an ignition interlock device. The court shall require proof of installation of the device before issuing an order granting a restricted license. Once the order granting a restricted license is issued, all maintenance requirements in Section 23246 apply and the driver becomes subject to the prohibitions and penalties provided in Section 23247. (C) The person provides proof of responsibility to respond in damages. (D) The person has not applied for and received an order in conjunction with the current underlying conviction or a prior conviction for violation of Section 23103, 23152, or 23153, if the prior conviction was within the previous seven years. (E) Any individual convicted of a violation of Section 23152 punishable under Section 23170 may also, at any time after sentencing, petition the court for referral to an 18-month program or, if available in the county of the person's residence or employment, a 30-month program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code. Unless good cause is shown, the court shall order the referral.

(6) Upon a conviction or finding of a violation of Section 23153 punishable under Section 23190, the privilege shall be revoked for a period of five years. The privilege shall not be reinstated until evidence satisfactory to the department establishes that no grounds exist which would authorize the refusal to issue a license and until the person gives proof of ability to respond in damages and gives proof satisfactory to the department of successful completion, subsequent to the most recent underlying conviction, of one of the following programs: a 30-month program, if available in the county of the person's residence or employment or, if not available, an 18-month program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code, or a program specified in Section 8001 of the Penal Code. The court shall advise the person at the time of sentencing that completion of one of the programs authorized by this paragraph is required in order to become eligible for a California driver's license. The court shall also advise the person that after the completion of 24 months of the revocation period, the person may apply to the court for an order granting a restricted driver's license, subject to the following conditions: (A) (i) The person has satisfactorily completed, subject to the current underlying conviction, the 18-month program or the initial 18 months of a licensed 30-month program, as applicable, pursuant to Section 11836 of the Health and Safety Code. (ii) The person agrees, as a condition of the restriction, to continue satisfactory participation in the 30-month program, if applicable, and to have installed and maintained, as described in Section 23246, an ignition interlock device. The court shall require proof of installation of the device before issuing an order granting a restricted license. Once the order granting a restricted license is issued, all maintenance requirements in Section 23246 apply and the driver becomes subject to the prohibitions and penalties provided in Section 23247. (iii) The person provides proof of responsibility to respond in damages. (iv) The person has not applied for and received an order in

conjunction with the current underlying conviction or a prior conviction for a violation of Section 23103, 23152, or 23153, if the prior conviction was within the previous seven years. (B) Any individual convicted of a violation of Section 23153 punishable under Section 23190 may also, at any time after sentencing, petition the court for referral to an 18-month program or, if available in the county of the person's residence or employment, a 30-month program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code. Unless good cause is shown, the court shall order the referral.

(7) Upon a conviction or finding of a violation of Section 23152 punishable under Section 23175 or 23175.5, the privilege shall be revoked for a period of four years. The privilege shall not be reinstated until evidence satisfactory to the department establishes that no grounds exist which would authorize the refusal to issue a license and until the person gives proof of ability to respond in damages and gives proof satisfactory to the department of successful completion, subsequent to the most recent underlying conviction, of one of the following programs: an 18-month program or, if available in the county of the person's residence or employment, a 30-month program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code, or a program specified in Section 8001 of the Penal Code. The court shall advise the person at the time of sentencing that completion of one of the programs authorized by this paragraph is required in order to become eligible for a California driver's license. The court shall also advise the person that after the completion of 24 months of the revocation period, the person may apply to the court for an order granting a restricted driver's license, subject to the following conditions: (A) The person has satisfactorily completed, subject to the current underlying conviction, the initial 18 months of a licensed 30-month program pursuant to Section 11836 of the Health and Safety Code. (B) The person agrees, as a condition of the restriction, to continue satisfactory participation in the 30-month program, if applicable, and to have installed and maintained, as described in Section 23246, an ignition interlock device. The court shall require proof of installation of the device before issuing an order granting a restricted license. Once the order granting a restricted license is issued, all maintenance requirements in Section 23246 apply and the driver becomes subject to the prohibitions and penalties provided in Section 23247. (C) The person provides proof of responsibility to respond in damages. (D) The person has not applied for and received an order in conjunction with the current underlying conviction or a prior conviction for violation of Section 23103, 23152, or 23153, if the prior conviction was within the previous seven years. (E) Any individual convicted of a violation of Section 23152 punishable under Section 23175 may also, at any time after sentencing, petition the court for referral to an 18-month program or, if available in the county of the person's residence or employment, a 30-month program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code. Unless good cause is shown, the court shall order the referral.

(8) Upon a conviction or finding of a violation of subdivision (a) of Section 23109 punishable under subdivision (e) of that section, the privilege shall be suspended for a period of 90 days to six months, if and as ordered by the court.

(9) Upon a conviction or finding of a violation of subdivision (a) of Section 23109 punishable under subdivision (f) of that section, the privilege shall be suspended for a period of six months, if the court orders the department to suspend the privilege. The privilege shall not be reinstated until the person gives proof of ability to respond in damages. (b) For the purpose of paragraphs (2) to (9), inclusive, of subdivision (a), the finding of the juvenile court judge, the juvenile traffic hearing officer, or the referee of a juvenile court of a commission of a violation of Section 23152 or 23153 or subdivision (a) of Section 23109, as specified in subdivision (a) of this section, is a conviction. (c) Each judge of a juvenile court, juvenile traffic hearing officer, or referee of a juvenile court shall immediately report the findings specified in subdivision (a) to the department. (d) A conviction of an offense in any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or Canada which, if committed in this state, would be a violation of Section 23152, is a conviction of Section 23152 for purposes of this section, and a conviction of an offense which, if committed in this state, would be a violation of Section 23153, is a conviction of Section 23153 for purposes of this section. The department shall suspend or revoke the privilege to operate a motor vehicle pursuant to this section upon receiving notice of that conviction. (e) Whenever the driving privilege is restricted, suspended, or revoked pursuant to this section, the department shall not issue a restricted driver's license or reinstate the driving privilege unless the person gives proof of ability to respond in damages and maintains that proof for three years. If, at any time during that three-year period, a person who is required to maintain that proof fails to maintain that proof, the department shall suspend that person's driving privilege until the proof of ability to respond in damages is again given to the department.

13352. (a) The department shall immediately suspend or revoke, or record the court-administered suspension or revocation of, the privilege of any person to operate a motor vehicle upon receipt of a duly certified abstract of the record of any court



showing that the person has been convicted of a violation of Section 23152 or 23153 or subdivision (a) of Section 23109, or upon receipt of a report of a judge of the juvenile court, a juvenile traffic hearing officer, or a referee of a juvenile court showing that the person has been found to have committed a violation of Section 23152 or 23153 or subdivision (a) of Section 23109. If any offense specified in this section occurs in a vehicle defined in Section 15210, the suspension or revocation specified below shall apply to the noncommercial driving privilege. The commercial driving privilege shall be disqualified as specified in Section 15300. For the purposes of this section, suspension or revocation shall be as follows:

(1) Upon a conviction or finding of a violation of Section 23152 punishable under Section 23160, the privilege shall be suspended for a period of six months. The privilege shall not be reinstated until the person gives proof of ability to respond in damages and gives proof satisfactory to the department of successful completion of a program described in subdivision (b) of Section 23161. The department shall issue a restricted license upon receipt of an abstract of record from the court certifying the court has granted probation to the person based on the conditions specified in paragraph

(2) of subdivision (a) of, and subdivision (b) of, Section 23161. (2) Upon a conviction or finding of a violation of Section 23153 punishable under Section 23180, the privilege shall be suspended for a period of one year. The privilege shall not be reinstated until the person gives proof of ability to respond in damages and gives proof satisfactory to the department of successful completion of a program described in Section 23181.

(3) Except as provided in Section 13352.5, upon a conviction or finding of a violation of Section 23152 punishable under Section 23165, the privilege shall be suspended for two years. The privilege shall not be reinstated until the person gives proof of ability to respond in damages and gives proof satisfactory to the department of successful completion, subsequent to the most recent underlying conviction, of a program described in Section 23166. The department shall advise the person that after completion of 12 months of the suspension period, the person may apply to the department for a restricted driver's license, subject to the following conditions:

(A) The person has satisfactorily provided, subsequent to the current underlying conviction, either of the following: (i) Proof of enrollment in a licensed 18-month program pursuant to Section 11836 of the Health and Safety Code. (ii) Proof of enrollment in a licensed 30-month program, if available in the county of the person's residence or employment, pursuant to Section 11836 of the Health and Safety Code. (B) The person agrees, as a condition of the restriction, to continue satisfactory participation in the program described in subparagraph (A). (C) The person submits the "Verification of Installation" form described in paragraph (2) of subdivision (e) of Section 23235. (D) The person agrees to maintain the ignition interlock device as required under subdivision (g) of Section 23246. (E) The person provides proof of financial responsibility, as defined in Section 16430. (F) The person pays all applicable reinstatement or reissue fees and any restriction fee required by the department. (G) The restriction shall remain in effect for the period required in subdivision (f) of Section 23246.

(4) Except as provided in this paragraph, upon a conviction or finding of a violation of Section 23153 punishable under Section 23185, the privilege shall be revoked for a period of three years. The privilege shall not be reinstated until evidence satisfactory to the department establishes that no grounds exist that would authorize the refusal to issue a license, the person gives proof of ability to respond in damages, and the person gives proof satisfactory to the department of successful completion, subsequent to the most recent underlying conviction, of a program described in Section 23186. The department shall advise the person that after the completion of 18 months of the revocation period, the person may apply to the department for a restricted driver's license, subject to the following conditions: (A) The person has satisfactorily completed, subsequent to the current underlying conviction, either of the following: (i) A licensed 18-month program pursuant to Section 11836 of the Health and Safety Code. (ii) The initial 18 months of a licensed 30-month program, if available in the county of the person's residence or employment, pursuant to Section 11836 of the Health and Safety Code, and the person agrees, as a condition of the restriction, to continue satisfactory participation in that 30-month program. (B) The person submits the "Verification of Installation" form described in paragraph (2) of subdivision (e) of Section 23235. (C) The person agrees to maintain the ignition interlock device as required under subdivision (g) of Section 23246. (D) The person provides proof of financial responsibility, as defined in Section 16430. (E) The person pays all applicable reinstatement or reissue fees and any restriction fee required by the department. (F) The restriction shall remain in effect for the period required in subdivision (f) of Section 23246.

(5) Except as provided in this paragraph, upon a conviction or finding of a violation of Section 23152 punishable under Section 23170, the privilege shall be revoked for a period of three years. The privilege shall not be reinstated until the person

files proof of ability to respond in damages and gives proof satisfactory to the department of successful completion, subsequent to the most recent underlying conviction, of one of the following programs: an 18-month program or, if available in the county of the person's residence or employment, a 30-month program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code, or a program specified in Section 8001 of the Penal Code. The court shall advise the person at the time of sentencing that completion of one of the programs authorized by this paragraph is required in order to become eligible for a California driver's license. The department shall advise the person that after completion of 18 months of the revocation period, the person may apply to the department for a restricted driver's license, subject to the following conditions: (A) The person has satisfactorily completed, subsequent to the current underlying conviction, either of the following: (i) A licensed 18-month program pursuant to Section 11836 of the Health and Safety Code. (ii) The initial 18 months of a licensed 30-month program, if available in the county of the person's residence or employment, pursuant to Section 11836 of the Health and Safety Code. The person agrees, as a condition of the restriction, to continue satisfactory participation in the 30-month program. (B) The person submits the "Verification of Installation" form described in paragraph (2) of subdivision (e) of Section 23235. (C) The person agrees to maintain the ignition interlock device as required under subdivision (g) of Section 23246. (D) The person provides proof of financial responsibility, as defined in Section 16430. (E) Any individual convicted of a violation of Section 23152 punishable under Section 23170 may also, at any time after sentencing, petition the court for referral to an 18-month program or, if available in the county of the person's residence or employment, a 30-month program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code. Unless good cause is shown, the court shall order the referral. (F) The person pays all applicable reinstatement or reissue fees and any restriction fee required by the department. (G) The restriction shall remain in effect for the period required in subdivision (f) of Section 23246.

(6) Except as provided in this paragraph, upon a conviction or finding of a violation of Section 23153 punishable under Section 23190, the privilege shall be revoked for a period of five years. The privilege shall not be reinstated until evidence satisfactory to the department establishes that no grounds exist that would authorize the refusal to issue a license, and the person gives proof of ability to respond in damages and proof satisfactory to the department of successful completion, subsequent to the most recent underlying conviction, of one of the following programs: a 30-month program, if available in the county of the person's residence or employment or, if not available, an 18-month program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code, or a program specified in Section 8001 of the Penal Code. The court shall advise the person at the time of sentencing that completion of one of the programs authorized by this paragraph is required in order to become eligible for a California driver's license. The department shall advise the person that after the completion of 30 months of the revocation period, the person may apply to the department for a restricted driver's license, subject to the following conditions: (A) The person has satisfactorily completed, subsequent to the current underlying conviction, either of the following: (i) The initial 18 months of a licensed 30-month program, if available in the county of the person's residence or employment, pursuant to Section 11836 of the Health and Safety Code. The person agrees, as a condition of the restriction, to continue satisfactory participation in the 30-month program. (ii) A licensed 18-month program pursuant to Section 11836 of the Health and Safety Code, if a 30-month program is unavailable in the person's county of residence or employment. (B) The person submits the "Verification of Installation" form described in paragraph (2) of subdivision (e) of Section 23235. (C) The person agrees to maintain the ignition interlock device as required under subdivision (g) of Section 23246. (D) The person provides proof of financial responsibility, as defined in Section 16430. (E) Any individual convicted of a violation of Section 23153 punishable under Section 23190 may also, at any time after sentencing, petition the court for referral to an 18-month program or, if available in the county of the person's residence or employment, a 30-month program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code. Unless good cause is shown, the court shall order the referral. (F) The person pays all applicable reinstatement or reissue fees and any restriction fee required by the department. (G) The restriction shall remain in effect for the period required in subdivision (f) of Section 23246.

(7) Except as provided in this paragraph, upon a conviction or finding of a violation of Section 23152 punishable under Section 23175 or 23175.5, the privilege shall be revoked for a period of four years. The privilege shall not be reinstated until evidence satisfactory to the department establishes that no grounds exist that would authorize the refusal to issue a license, and the person gives proof of ability to respond in damages and proof satisfactory to the department of successful completion, subsequent to the most recent underlying conviction, of one of the following programs: an 18-month program or, if available in the county of the person's residence or employment, a 30-month program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code, or a program specified in Section 8001 of the Penal Code. The court shall advise the person at the time of sentencing that completion of one of the programs

authorized by this paragraph is required in order to become eligible for a California driver's license. The department shall advise the person that after the completion of 24 months of the revocation period, the person may apply to the department for a restricted driver's license, subject to the following conditions: (A) The person has satisfactorily completed, subsequent to the current underlying conviction, either of the following: (i) A licensed 18-month program pursuant to Section 11836 of the Health and Safety Code. (ii) The initial 18 months of a licensed 30-month program, if available in the county of the person's residence or employment, pursuant to Section 11836 of the Health and Safety Code. The person agrees, as a condition of the restriction, to continue satisfactory participation in the 30-month program. (B) The person submits the "Verification of Installation" form described in paragraph (2) of subdivision (e) of Section 23235. (C) The person agrees to maintain the ignition interlock device as required under subdivision (g) of Section 23246. (D) The person provides proof of financial responsibility, as defined in Section 16430. (E) Any individual convicted of a violation of Section 23152 punishable under Section 23175 may also, at any time after sentencing, petition the court for referral to an 18-month program or, if available in the county of the person's residence or employment, a 30-month program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code. Unless good cause is shown, the court shall order the referral. (F) The person pays all applicable reinstatement or reissue fees and any restriction fee required by the department. (G) The restriction shall remain in effect for the period required in subdivision (f) of Section 23246.

(8) Upon a conviction or finding of a violation of subdivision (a) of Section 23109 punishable under subdivision (e) of that section, the privilege shall be suspended for a period of 90 days to six months, if and as ordered by the court. (9) Upon a conviction or finding of a violation of subdivision (a) of Section 23109 punishable under subdivision (f) of that section, the privilege shall be suspended for a period of six months, if the court orders the department to suspend the privilege. The privilege shall not be reinstated until the person gives proof of ability to respond in damages. (b) For the purpose of paragraphs (2) to

(9), inclusive, of subdivision (a), the finding of the juvenile court judge, the juvenile traffic hearing officer, or the referee of a juvenile court of a commission of a violation of Section 23152 or 23153 or subdivision (a) of Section 23109, as specified in subdivision (a) of this section, is a conviction. (c) Each judge of a juvenile court, juvenile traffic hearing officer, or referee of a juvenile court shall immediately report the findings specified in subdivision (a) to the department. (d) A conviction of an offense in any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or Canada that, if committed in this state, would be a violation of Section 23152, is a conviction of Section 23152 for purposes of this section, and a conviction of an offense that, if committed in this state, would be a violation of Section 23153, is a conviction of Section 23153 for purposes of this section. The department shall suspend or revoke the privilege to operate a motor vehicle pursuant to this section upon receiving notice of that conviction.

13352.2. Any finding of a juvenile court judge, juvenile traffic hearing officer, or referee of a juvenile court of a commission of an offense in any state, territory, possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or the Dominion of Canada which, if committed in this state, would be a violation of Section 23152, is a conviction of Section 23152 for the purposes of Sections 13352, 13352.3, and 13352.5, and the finding of a juvenile court judge, juvenile traffic hearing officer, or referee of a juvenile court of a commission of an offense which, if committed in this state, would be a violation of Section 23153 is a conviction of Section 23153 for the purposes of Sections 13352, 13352.3, and 13352.5.

13352.3. (a) Notwithstanding any other provision of law, except subdivisions (b), (c), and (d) of Section 13352 and Sections 13352.2 and 13367, the department immediately shall revoke the privilege of any person to operate a motor vehicle upon receipt of a duly certified abstract of the record of any court showing that the person was convicted of a violation of Section 23152 or 23153 while under 18 years of age, or upon receipt of a report of a judge of the juvenile court, a juvenile traffic hearing officer, or a referee of a juvenile court showing that the person has been found to have committed a violation of Section 23152 or 23153. (b) The term of the revocation shall be until the person reaches 18 years of age, for one year, or for the period prescribed for restriction, suspension, or revocation specified in subdivision (a) of Section 13352, whichever is longer. The privilege shall not be reinstated until the person gives proof of financial responsibility as defined in Section 16430.

13352.3. (a) Notwithstanding any other provision of law, except subdivisions (b), (c), and (d) of Section 13352 and Sections 13367 and 23521, the department immediately shall revoke the privilege of any person to operate a motor vehicle upon receipt of a duly certified abstract of the record of any court showing that the person was convicted of a violation of Section 23152 or 23153 while under 18 years of age, or upon receipt of a report of a judge of the juvenile court, a juvenile traffic hearing officer, or a referee of a juvenile court showing that the person has been found to have committed a violation of Section 23152 or 23153. (b) The term of the revocation shall be until the person reaches 18 years of age, for one year, or for the period

prescribed for restriction, suspension, or revocation specified in subdivision (a) of Section 13352, whichever is longer. The privilege shall not be reinstated until the person gives proof of financial responsibility as defined in Section 16430.

13352.4. (a) (1) The department shall require a person upon whom the court has imposed the condition of probation required by subdivision (b) of Section 23161 to submit proof of the satisfactory completion of a program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code or of a program defined in Section 8001 of the Penal Code, within a time period set by the department, beginning from the date of a conviction or a finding by a court of a violation of Section 23152. (2) The department shall require a person upon whom the court has imposed the condition of probation required by subdivision (b) of Section 23161 to submit proof of the satisfactory completion of the Navy Alcohol Drug Safety Action Program, within a time period set by the department, beginning from the date of a conviction by a court or a finding by a court of a violation of Section 23152. (b) The department shall suspend the privilege to drive of any person who is not in compliance with subdivision (a). (c) The department shall not restore the privilege to operate a motor vehicle after a suspension pursuant to subdivision (b) until the department receives proof of the completion of a program pursuant to subdivision (a) that the department finds satisfactory. (d) This section shall become operative on January 1, 1995.

13352.4. (a) The department shall require a person upon whom the court has imposed the condition of probation required by subdivision (b) of Section 23161 to submit proof of the satisfactory completion of a program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code or of a program defined in Section 8001 of the Penal Code, within a time period set by the department, beginning from the date of a conviction or a finding by a court of a violation of Section 23152. (b) The department shall suspend the privilege to drive of any person who is not in compliance with subdivision (a). (c) The department may suspend the privilege to drive of any person for failure to file proof of financial responsibility when the person has been ordered by the court to do so. The suspension shall remain in effect until adequate proof of financial responsibility is filed with the department by the person. (d) The department shall not restore the privilege to operate a motor vehicle after a suspension pursuant to subdivision (b) until the department receives proof of the completion of a program pursuant to subdivision (a) that the department finds satisfactory. (e) This section shall become operative on January 1, 1995.

13352.5. (a) Unless ordered to do so by the court upon a finding that the terms and conditions of probation were violated, the department shall not suspend, pursuant to paragraph (3) of subdivision (a) of Section 13352, but shall restrict, the privilege of any person to operate a motor vehicle upon a conviction or finding that the person violated Section 23152. This requirement shall apply only if the court has certified to the department that the court has granted probation to the person under conditions that include those specified in subdivision (b) of Section 23166, the court has restricted the privilege to operate a motor vehicle as provided in that subdivision, and the person gives proof of financial responsibility, as defined in Section 16430. (b) Unless ordered to do so by the court upon a finding that the terms and conditions of probation were violated, the department shall not revoke, pursuant to paragraph (4) of subdivision (a) of Section 13352, but shall suspend for one year and, thereafter, restrict for two additional years, the privilege of any person to operate a motor vehicle upon a conviction or finding that the person violated Section 23153. This requirement shall apply only if the court has certified to the department that the court has granted probation to the person under conditions that include those specified in subdivision (b) of Section 23186, the court has ordered the department to suspend the privilege to operate a motor vehicle as provided in that subdivision, and the person gives proof of financial responsibility. (c) Subdivisions (a) and (b) do not apply to a person who has been referred or rereferred into a program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code within four years after the person ceases his or her prior participation in a program. The four-year period shall commence either on the date the person successfully completes the program or on the date on which the person's driving privilege was suspended or revoked by the department for failure to comply with the program's rules and regulations, whichever is later. The eligibility of a person convicted of a violation of Section 23152 or 23153 subsequent to the commencement of a four-year period, to participate in the program again for purposes of this section, shall be determined on the basis of the date on which the person is alleged to have committed that offense. (d) The restriction of the driving privilege under subdivision (a) shall become effective 30 days from the date on which the person consented to participate in the program specified in subdivision (a), excluding any time of imprisonment ordered by the court. This requirement applies only if the person presents evidence satisfactory to the department that he or she is participating in the program specified in subdivision (b) of Section 23166, gives proof of financial responsibility, and pays fees to the department of fifteen dollars (\$15) upon application for the restricted license and twenty dollars (\$20) upon completion of the treatment program or upon application for an unrestricted license, whichever is sooner. If the person fails to apply for a restricted license, fails

to give proof of financial responsibility, or if the person fails to show evidence of participation within 30 days, excluding the time of imprisonment ordered by the court, the department shall suspend the driving privilege of the person for the time prescribed in paragraph (3) of subdivision (a) of Section 13352. (e) The restriction of the driving privilege under subdivision (b) shall become effective 30 days from the end of the period of suspension if the person presents evidence satisfactory to the department that he or she is participating in the program specified in subdivision (b) of Section 23186, gives proof of financial responsibility, and pays fees to the department of fifteen dollars (\$15) upon application for the restricted license and twenty dollars (\$20) upon completion of the treatment program or upon application for an unrestricted license, whichever is sooner. If the person fails to apply for a restricted license, fails to give proof of financial responsibility, or if the person fails to show evidence of participation within 30 days from the end of the period of suspension, excluding any time of imprisonment ordered by the court to be served after the end of the period of suspension, the department shall revoke the driving privilege of the person for the time prescribed in paragraph (4) of subdivision (a) of Section 13352.

(f) The driving privilege restricted under subdivision (a) or (b) shall be limited to the hours for driving to and from the place of employment and during the course of employment, and driving to and from activities required in an alcohol treatment program specified in subdivision (b) of Section 23166 or subdivision (b) of Section 23186. The department may set forth the times and days of restricted operation established by the court either on a special restricted license or upon the usual license form. Whenever the driving privilege is restricted under subdivision (a) or (b), proof of financial responsibility shall be maintained for three years. If the person maintains proof of financial responsibility, the restriction shall continue in full force and effect until the person presents evidence satisfactory to the department that the person has completed the alcohol treatment program. The length of the restriction for a person subject to subdivision (a) shall not be less than the total time of restriction specified in subdivision (b) of Section 23166. The total time of suspension and restriction for a person subject to subdivision (b) shall not be less than the applicable period of revocation under paragraph (4) of subdivision (a) of Section 13352. (g) Except as provided in this subdivision, the department shall suspend or revoke the driving privilege for the time prescribed in paragraph (3) or (4) of subdivision (a) of Section 13352, 60 days from the date that the department notifies the person and the court of the intended action pursuant to subdivision (a) of Section 11837.1 of the Health and Safety Code, or from the date ending the additional time ordered by the court under this subdivision, whichever is later. If the person presents evidence satisfactory to the department that the court of jurisdiction has consented to the person's reinstatement in the program and the person gives proof of financial responsibility, the department shall continue in effect the restriction granted under subdivision (c). However, if the person previously has been reinstated in the program on one or more occasions, the department shall suspend or revoke the driving privilege for the time prescribed in paragraph (3) or (4) of subdivision (a) of Section 13352. The evidence shall be presented within 45 days of the notice from the department of the intended action or the additional time, not to exceed an additional 45 days, for the determination, as is required, ordered, and transmitted to the department by the court, which additional time is not caused by any action or failure to act by the person. (h) All abstracts of record showing a conviction that are forwarded to the department pursuant to Section 1803 shall state whether the court has granted probation to the person under conditions that include those specified in subdivision (b) of Section 23166 or subdivision (b) of Section 23186, and that state the date on which the person consented to participate in the program. (i) The department, in cooperation with the State Department of Alcohol and Drug Programs, shall adopt regulations as it deems necessary to implement this section. (j) This section does not apply to persons whose offense occurred in a vehicle requiring a driver with a class 1, class 2, class A, or class B driver's license, or with an endorsement specified in Section 15278.

13352.5. (a) The department shall issue a restricted driver's license to a person granted probation under the conditions described in subdivision (b) of Section 23166 instead of suspending that person's license, if the person meets all of the following requirements: (1) Submits proof of enrollment in, or completion of, a drug and alcohol treatment program described in paragraph (4) of subdivision (b) of Section 23166. (2) Submits proof of financial responsibility, as described in Section 16430. (3) Pays all applicable reinstatement or reissue fees and any restriction fee required by the department. (b) The restriction of the driving privilege shall become effective when the department receives all of the documents and fees required under subdivision (a) and shall remain effective for the period required under Section 23166. (c) The restriction of the driving privilege shall be limited to the hours necessary for driving to and from the place of employment, driving during the course of employment, and driving to and from activities required in the treatment program. (d) Whenever the driving privilege is restricted under this section, proof of financial responsibility, as defined in Section 16430, shall be maintained for three years. If the person does not maintain that proof of financial responsibility at any time during the restriction, the driving privilege shall be suspended until proof pursuant to Section 16484 is received by the department. (e) The restriction imposed under this section may be removed when the person presents evidence satisfactory to the department that the per-

son has completed the drug and alcohol treatment program. (f) The department shall suspend the privilege to drive under paragraph (3) of subdivision (a) of Section 13352 upon receipt of notification from the treatment program that the person has failed to comply with the program requirements. (g) After completion of 12 months of the suspension or probation period, the offender may apply to the department for a restricted driver's license, subject to the conditions specified in paragraph (3) of subdivision (a) of Section 13352.

13353. (a) If any person refuses the officer's request to submit to, or fails to complete, a chemical test or tests pursuant to Section 23157, upon receipt of the officer's sworn statement that the officer had reasonable cause to believe the person had been driving a motor vehicle in violation of Section 23140, 23152, or 23153, and that the person had refused to submit to, or did not complete, the test or tests after being requested by the officer, the department shall do one of the following: (1) Suspend the person's privilege to operate a motor vehicle for a period of one year. (2) Revoke the person's privilege to operate a motor vehicle for a period of two years if the refusal occurred within seven years of either (A) a separate violation of Section 23103 as specified in Section 23103.5, or of Section 23140, 23152, or 23153, or of Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, which resulted in a conviction, or (B) a suspension or revocation of the person's privilege to operate a motor vehicle pursuant to this section or Section 13353.2 for an offense which occurred on a separate occasion. (3) Revoke the person's privilege to operate a motor vehicle for a period of three years if the refusal occurred within seven years of any of the following: (A) Two or more separate violations of Section 23103 as specified in Section 23103.5, or of Section 23140, 23152, or 23153, or of Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, or any combination thereof, which resulted in convictions. (B) Two or more suspensions or revocations of the person's privilege to operate a motor vehicle pursuant to this section or Section 13353.2 for offenses which occurred on separate occasions. (C) Any combination of two or more of those convictions or administrative suspensions or revocations. The officer's sworn statement shall be submitted pursuant to Section 23158.2 on a form furnished or approved by the department. The suspension or revocation shall not become effective until 30 days after the giving of written notice thereof, or until the end of any stay of the suspension or revocation, as provided for in Section 13558. (b) The notice of the order of suspension or revocation under this section shall be served on the person by a peace officer pursuant to Section 23157. The notice of the order of suspension or revocation shall be on a form provided by the department. If the notice of the order of suspension or revocation has not been served by the peace officer pursuant to Section 23157, the department immediately shall notify the person in writing of the action taken. The peace officer who serves the notice, or the department, if applicable, also shall provide, if the officer or department, as the case may be, determines that it is necessary to do so, the person with the appropriate non-English notice developed pursuant to subdivision (d) of Section 14100. (c) Upon receipt of the officer's sworn statement, the department shall review the record. For purposes of this section, the scope of the administrative review shall cover all of the following issues: (1) Whether the peace officer had reasonable cause to believe the person had been driving a motor vehicle in violation of Section 23140, 23152, or 23153. (2) Whether the person was placed under arrest. (3) Whether the person refused to submit to, or did not complete, the test or tests after being requested by a peace officer. (4) Whether, except for the persons described in subdivision (a) of Section 23157 who are incapable of refusing, the person had been told that his or her driving privilege would be suspended or revoked if he or she refused to submit to, or did not complete, the test or tests. (d) The person may request an administrative hearing pursuant to Section 13558. Except as provided in subdivision (e) of Section 13558, the request for an administrative hearing does not stay the order of suspension or revocation.

13353. (a) If any person refuses the officer's request to submit to, or fails to complete, a chemical test or tests pursuant to Section 23612, upon receipt of the officer's sworn statement that the officer had reasonable cause to believe the person had been driving a motor vehicle in violation of Section 23140, 23152, or 23153, and that the person had refused to submit to, or did not complete, the test or tests after being requested by the officer, the department shall do one of the following: (1) Suspend the person's privilege to operate a motor vehicle for a period of one year. (2) Revoke the person's privilege to operate a motor vehicle for a period of two years if the refusal occurred within seven years of either (A) a separate violation of Section 23103 as specified in Section 23103.5, or of Section 23140, 23152, or 23153, or of Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, that resulted in a conviction, or (B) a suspension or revocation of the person's privilege to operate a motor vehicle pursuant to this section or Section 13353.2 for an offense which occurred on a separate occasion. (3) Revoke the person's privilege to operate a motor vehicle for a period of three years if the refusal occurred within seven years of any of the following: (A) Two or more separate violations of Section 23103 as specified in Section 23103.5, or of Section 23140, 23152, or 23153, or of Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, or any combination thereof, which resulted in convictions. (B) Two or more suspensions or revocations of the person's privilege to operate a motor vehicle pursuant to this section or Section 13353.2 for offenses which occurred on sepa-

rate occasions. (C) Any combination of two or more of those convictions or administrative suspensions or revocations. The officer's sworn statement shall be submitted pursuant to Section 13380 on a form furnished or approved by the department. The suspension or revocation shall not become effective until 30 days after the giving of written notice thereof, or until the end of any stay of the suspension or revocation, as provided for in Section 13558. (b) The notice of the order of suspension or revocation under this section shall be served on the person by a peace officer pursuant to Section 23612. The notice of the order of suspension or revocation shall be on a form provided by the department. If the notice of the order of suspension or revocation has not been served by the peace officer pursuant to Section 23612, the department immediately shall notify the person in writing of the action taken. The peace officer who serves the notice, or the department, if applicable, also shall provide, if the officer or department, as the case may be, determines that it is necessary to do so, the person with the appropriate non-English notice developed pursuant to subdivision (d) of Section 14100. (c) Upon receipt of the officer's sworn statement, the department shall review the record. For purposes of this section, the scope of the administrative review shall cover all of the following issues: (1) Whether the peace officer had reasonable cause to believe the person had been driving a motor vehicle in violation of Section 23140, 23152, or 23153. (2) Whether the person was placed under arrest. (3) Whether the person refused to submit to, or did not complete, the test or tests after being requested by a peace officer. (4) Whether, except for the persons described in subdivision (a) of Section 23612 who are incapable of refusing, the person had been told that his or her driving privilege would be suspended or revoked if he or she refused to submit to, or did not complete, the test or tests. (d) The person may request an administrative hearing pursuant to Section 13558. Except as provided in subdivision (e) of Section 13558, the request for an administrative hearing does not stay the order of suspension or revocation.

13353.1. (a) If any person refuses an officer's request to submit to, or fails to complete, a preliminary alcohol screening test pursuant to Section 23137, upon receipt of the officer's sworn statement, submitted pursuant to Section 23158.2, that the officer had reasonable cause to believe the person had been driving a motor vehicle in violation of Section 23136, and that the person had refused to submit to, or did not complete, the test after being requested by the officer, the department shall do one of the following: (1) Suspend the person's privilege to operate a motor vehicle for a period of one year. (2) Revoke the person's privilege to operate a motor vehicle for a period of two years if the refusal occurred within seven years of either of the following: (A) A separate violation of subdivision (a) of Section 23136, which resulted in a finding of a violation, or a separate violation, which resulted in a conviction, of Section 23103, as specified in Section 23103.5, of Section 23140, 23152, or 23153, of Section 191.5 of the Penal Code, or of paragraph (3) of subdivision (c) of Section 192 of that code. (B) A suspension or revocation of the person's privilege to operate a motor vehicle if that action was taken pursuant to this section or Section 13353 or 13353.2 for an offense that occurred on a separate occasion. (3) Revoke the person's privilege to operate a motor vehicle for a period of three years if the refusal occurred within seven years of any of the following: (A) Two or more separate violations of subdivision (a) of Section 23136, which resulted in findings of violations, or two or more separate violations, which resulted in convictions, of Section 23103, as specified in Section 23103.5, of Section 23140, 23152, or 23153, of Section 191.5 of the Penal Code, or of paragraph (3) of subdivision (c) of Section 192 of that code, or any combination thereof. (B) Two or more suspensions or revocations of the person's privilege to operate a motor vehicle if those actions were taken pursuant to this section, or Section 13353 or 13353.2, for offenses that occurred on separate occasions. (C) Any combination of two or more of the convictions or administrative suspensions or revocations described in subparagraphs (A) or (B). (b) The notice of the order of suspension or revocation under this section shall be served on the person by the peace officer pursuant to Section 23137 and shall not become effective until 30 days after the person is served with that notice. The notice of the order of suspension or revocation shall be on a form provided by the department. If the notice of the order of suspension or revocation has not been served by the peace officer pursuant to Section 23137, the department immediately shall notify the person in writing of the action taken. The peace officer who serves the notice, or the department, if applicable, also shall provide, if the officer or department, as the case may be, determines that it is necessary to do so, the person with the appropriate non-English notice developed pursuant to subdivision (d) of Section 14100. (c) Upon receipt of the officer's sworn statement, the department shall review the record. For purposes of this section, the scope of the administrative review shall cover all of the following issues: (1) Whether the peace officer had reasonable cause to believe the person had been driving a motor vehicle in violation of Section 23136. (2) Whether the person was lawfully detained. (3) Whether the person refused to submit to, or did not complete, the test after being requested to do so by a peace officer. (d) The person may request an administrative hearing pursuant to Section 13558. Except as provided in subdivision (e) of Section 13558, the request for an administrative hearing does not stay the order of suspension or revocation.

13353.1. (a) If any person refuses an officer's request to submit to, or fails to complete, a preliminary alcohol screening test pursuant to Section 13388, upon receipt of the officer's sworn statement, submitted pursuant to Section 13380, that the officer had reasonable cause to believe the person had been driving a motor vehicle in violation of Section 23136, and that the

person had refused to submit to, or did not complete, the test after being requested by the officer, the department shall do one of the following: (1) Suspend the person's privilege to operate a motor vehicle for a period of one year. (2) Revoke the person's privilege to operate a motor vehicle for a period of two years if the refusal occurred within seven years of either of the following: (A) A separate violation of subdivision (a) of Section 23136, which resulted in a finding of a violation, or a separate violation, which resulted in a conviction, of Section 23103, as specified in Section 23103.5, of Section 23140, 23152, or 23153, of Section 191.5 of the Penal Code, or of paragraph (3) of subdivision (c) of Section 192 of that code. (B) A suspension or revocation of the person's privilege to operate a motor vehicle if that action was taken pursuant to this section or Section 13353 or 13353.2 for an offense that occurred on a separate occasion. (3) Revoke the person's privilege to operate a motor vehicle for a period of three years if the refusal occurred within seven years of any of the following: (A) Two or more separate violations of subdivision (a) of Section 23136, which resulted in findings of violations, or two or more separate violations, which resulted in convictions, of Section 23103, as specified in Section 23103.5, of Section 23140, 23152, or 23153, of Section 191.5 of the Penal Code, or of paragraph (3) of subdivision (c) of Section 192 of that code, or any combination thereof. (B) Two or more suspensions or revocations of the person's privilege to operate a motor vehicle if those actions were taken pursuant to this section, or Section 13353 or 13353.2, for offenses that occurred on separate occasions. (C) Any combination of two or more of the convictions or administrative suspensions or revocations described in subparagraphs (A) or (B). (b) The notice of the order of suspension or revocation under this section shall be served on the person by the peace officer pursuant to Section 13388 and shall not become effective until 30 days after the person is served with that notice. The notice of the order of suspension or revocation shall be on a form provided by the department. If the notice of the order of suspension or revocation has not been served by the peace officer pursuant to Section 13388, the department immediately shall notify the person in writing of the action taken. The peace officer who serves the notice, or the department, if applicable, also shall provide, if the officer or department, as the case may be, determines that it is necessary to do so, the person with the appropriate non-English notice developed pursuant to subdivision (d) of Section 14100. (c) Upon receipt of the officer's sworn statement, the department shall review the record. For purposes of this section, the scope of the administrative review shall cover all of the following issues: (1) Whether the peace officer had reasonable cause to believe the person had been driving a motor vehicle in violation of Section 23136. (2) Whether the person was lawfully detained. (3) Whether the person refused to submit to, or did not complete, the test after being requested to do so by a peace officer. (d) The person may request an administrative hearing pursuant to Section 13558. Except as provided in subdivision (e) of Section 13558, the request for an administrative hearing does not stay the order of suspension or revocation.

13353.2. (a) The department shall immediately suspend the privilege of any person to operate a motor vehicle for any one of the following reasons: (1) The person was driving a motor vehicle when the person had 0.08 percent or more, by weight, of alcohol in his or her blood. (2) The person was under 21 years of age and had 0.05 percent or more, by weight, of alcohol in his or her blood. (3) The person was under 21 years of age and had a blood-alcohol concentration of 0.01 percent or greater, as measured by a preliminary alcohol screening test, or other chemical test. (b) The notice of the order of suspension under this section shall be served on the person by a peace officer pursuant to Section 23137 or 23158.5. The notice of the order of suspension shall be on a form provided by the department. If the notice of the order of suspension has not been served upon the person by the peace officer pursuant to Section 23137 or 23158.5, upon the receipt of the report of a peace officer submitted pursuant to Section 23158.2, the department shall mail written notice of the order of the suspension to the person at the last known address shown on the department's records and, if the address of the person provided by the peace officer's report differs from the address of record, to that address.

(c) The notice of the order of suspension shall clearly specify the reason and statutory grounds for the suspension, the effective date of the suspension, the right of the person to request an administrative hearing, the procedure for requesting an administrative hearing, and the date by which a request for an administrative hearing shall be made in order to receive a determination prior to the effective date of the suspension. (d) The department shall make a determination of the facts in subdivision (a) on the basis of the report of a peace officer submitted pursuant to Section 23158.2. The determination of the facts, after administrative review pursuant to Section 13557, by the department is final, unless an administrative hearing is held pursuant to Section 13558 and any judicial review of the administrative determination after the hearing pursuant to Section 13559 is final. (e) The determination of the facts in subdivision (a) is a civil matter which is independent of the determination of the person's guilt or innocence, shall have no collateral estoppel effect on a subsequent criminal prosecution, and shall not preclude the litigation of the same or similar facts in the criminal proceeding. If a person is acquitted of criminal charges relating to a determination of facts under subdivision (a), or if the person's driver's license was suspended pursuant to Section 23137 and the department finds no basis for a suspension pursuant to that section, the department shall immediately reinstate the person's privilege to operate a motor vehicle if the department has suspended it administratively



pursuant to subdivision (a), and the department shall return or reissue for the remaining term any driver's license which has been taken from the person pursuant to Section 23158.5 or otherwise. Notwithstanding subdivision (b) of Section 13558, if criminal charges under Section 23140, 23152, or 23153 are not filed by the district attorney because of a lack of evidence, or if those charges are filed but are subsequently dismissed by the court because of an insufficiency of evidence, the person has a renewed right to request an administrative hearing before the department. The request for a hearing shall be made within one year from the date of arrest.

(f) The department shall furnish a form that requires a detailed explanation specifying which evidence was defective or lacking and detailing why that evidence was defective or lacking. The form shall be made available to the person to provide to the district attorney. The department shall hold an administrative hearing, and the hearing officer shall consider the reasons for the failure to prosecute given by the district attorney on the form provided by the department. If applicable, the hearing officer shall consider the reasons stated on the record by a judge who dismisses the charges. No fee shall be imposed pursuant to Section 14905 for the return or reissuing of a driver's license pursuant to this subdivision. The disposition of a suspension action under this section does not affect any action to suspend or revoke the person's privilege to operate a motor vehicle under any other provision of this code, including, but not limited to, Section 13352 or 13353, or Chapter 3 (commencing with Section 13800).

13353.2. (a) The department shall immediately suspend the privilege of any person to operate a motor vehicle for any one of the following reasons: (1) The person was driving a motor vehicle when the person had 0.08 percent or more, by weight, of alcohol in his or her blood. (2) The person was under 21 years of age and had 0.05 percent or more, by weight, of alcohol in his or her blood. (3) The person was under 21 years of age and had a blood-alcohol concentration of 0.01 percent or greater, as measured by a preliminary alcohol screening test, or other chemical test. (b) The notice of the order of suspension under this section shall be served on the person by a peace officer pursuant to Section 13388 or 13382. The notice of the order of suspension shall be on a form provided by the department. If the notice of the order of suspension has not been served upon the person by the peace officer pursuant to Section 13388 or 13382, upon the receipt of the report of a peace officer submitted pursuant to Section 13380, the department shall mail written notice of the order of the suspension to the person at the last known address shown on the department's records and, if the address of the person provided by the peace officer's report differs from the address of record, to that address. (c) The notice of the order of suspension shall clearly specify the reason and statutory grounds for the suspension, the effective date of the suspension, the right of the person to request an administrative hearing, the procedure for requesting an administrative hearing, and the date by which a request for an administrative hearing shall be made in order to receive a determination prior to the effective date of the suspension. (d) The department shall make a determination of the facts in subdivision (a) on the basis of the report of a peace officer submitted pursuant to Section 13380. The determination of the facts, after administrative review pursuant to Section 13557, by the department is final, unless an administrative hearing is held pursuant to Section 13558 and any judicial review of the administrative determination after the hearing pursuant to Section 13559 is final. (e) The determination of the facts in subdivision (a) is a civil matter which is independent of the determination of the person's guilt or innocence, shall have no collateral estoppel effect on a subsequent criminal prosecution, and shall not preclude the litigation of the same or similar facts in the criminal proceeding. If a person is acquitted of criminal charges relating to a determination of facts under subdivision (a), or if the person's driver's license was suspended pursuant to Section 13388 and the department finds no basis for a suspension pursuant to that section, the department shall immediately reinstate the person's privilege to operate a motor vehicle if the department has suspended it administratively pursuant to subdivision (a), and the department shall return or reissue for the remaining term any driver's license which has been taken from the person pursuant to Section 13382 or otherwise. Notwithstanding subdivision (b) of Section 13558, if criminal charges under Section 23140, 23152, or 23153 are not filed by the district attorney because of a lack of evidence, or if those charges are filed but are subsequently dismissed by the court because of an insufficiency of evidence, the person has a renewed right to request an administrative hearing before the department. The request for a hearing shall be made within one year from the date of arrest.

(f) The department shall furnish a form that requires a detailed explanation specifying which evidence was defective or lacking and detailing why that evidence was defective or lacking. The form shall be made available to the person to provide to the district attorney. The department shall hold an administrative hearing, and the hearing officer shall consider the reasons for the failure to prosecute given by the district attorney on the form provided by the department. If applicable, the hearing officer shall consider the reasons stated on the record by a judge who dismisses the charges. No fee shall be imposed pursuant to Section 14905 for the return or reissuing of a driver's license pursuant to this subdivision. The disposition of a suspension action under this section does not affect any action to suspend or revoke the person's privilege to operate a motor

vehicle under any other provision of this code, including, but not limited to, Section 13352 or 13353, or Chapter 3 (commencing with Section 13800).

13353.3. (a) An order of suspension of a person's privilege to operate a motor vehicle pursuant to Section 13353.2 shall become effective 30 days after the person is served with the notice pursuant to Section 23137 or 23158.5, or subdivision (b) of Section 13353.2.

(b) The period of suspension of a person's privilege to operate a motor vehicle under Section 13353.2 is as follows: (1) Except as provided in Section 13353.6, if the person has not been convicted of a separate violation of Section 23103, as specified in Section 23103.5, of Section 23140, 23152, or 23153, of Section 191.5 of the Penal Code, or of paragraph (3) of subdivision (c) of Section 192 of that code, the person has not been administratively determined to have refused chemical testing pursuant to Section 13353 or 13353.1, or the person has not been administratively determined to have been driving with an excessive concentration of alcohol pursuant to Section 13353.2 on a separate occasion, which offense or occurrence occurred within seven years of the occasion in question, the person's privilege to operate a motor vehicle shall be suspended for four months. (2) If the person has been convicted of one or more separate violations of Section 23103, as specified in Section 23103.5, of Section 23140, 23152, or 23153, of Section 191.5 of the Penal Code, or of paragraph (3) of subdivision (c) of Section 192 of that code, the person has been administratively determined to have refused chemical testing pursuant to Section 13353 or 13353.1, or the person has been administratively determined to have been driving with an excessive concentration of alcohol pursuant to Section 13353.2 on a separate occasion, which offense or occasion occurred within seven years of the occasion in question, the person's privilege to operate a motor vehicle shall be suspended for one year. (3) Notwithstanding any other provision of law, if a person has been administratively determined to have been driving in violation of Section 23136 or to have refused chemical testing pursuant to Section 13353.1, the period of suspension shall not be for less than one year. (c) If a person's privilege to operate a motor vehicle is suspended pursuant to Section 13353.2 and the person is convicted of a violation of Section 23140, 23152, or 23153, including a violation described in Section 23156, arising out of the same occurrence, both the suspension under Section 13353.2 and the suspension or revocation under Section 13352 shall be imposed, except that, notwithstanding Section 13354, the periods of suspension or revocation shall run concurrently, and the total period of suspension or revocation shall not exceed the longer of the two suspension or revocation periods. This subdivision shall not affect a suspension or revocation pursuant to Section 13353 for refusal to submit to chemical testing or the imposition of consecutive periods of suspension or revocation pursuant to Section 13354 for that refusal.

13353.3. (a) An order of suspension of a person's privilege to operate a motor vehicle pursuant to Section 13353.2 shall become effective 30 days after the person is served with the notice pursuant to Section 13388 or 13382, or subdivision (b) of Section 13353.2. (b) The period of suspension of a person's privilege to operate a motor vehicle under Section 13353.2 is as follows: (1) Except as provided in Section 13353.6, if the person has not been convicted of a separate violation of Section 23103, as specified in Section 23103.5, of Section 23140, 23152, or 23153, of Section 191.5 of the Penal Code, or of paragraph (3) of subdivision (c) of Section 192 of that code, the person has not been administratively determined to have refused chemical testing pursuant to Section 13353 or 13353.1, or the person has not been administratively determined to have been driving with an excessive concentration of alcohol pursuant to Section 13353.2 on a separate occasion, which offense or occurrence occurred within seven years of the occasion in question, the person's privilege to operate a motor vehicle shall be suspended for four months. (2) If the person has been convicted of one or more separate violations of Section 23103, as specified in Section 23103.5, Section 23140, 23152, or 23153, Section 191.5 of the Penal Code, or paragraph (3) of subdivision (c) of Section 192 of that code, the person has been administratively determined to have refused chemical testing pursuant to Section 13353 or 13353.1, or the person has been administratively determined to have been driving with an excessive concentration of alcohol pursuant to Section 13353.2 on a separate occasion, which offense or occasion occurred within seven years of the occasion in question, the person's privilege to operate a motor vehicle shall be suspended for one year. (3) Notwithstanding any other provision of law, if a person has been administratively determined to have been driving in violation of Section 23136 or to have refused chemical testing pursuant to Section 13353.1, the period of suspension shall not be for less than one year. (c) If a person's privilege to operate a motor vehicle is suspended pursuant to Section 13353.2 and the person is convicted of a violation of Section 23140, 23152, or 23153, including a violation described in Section 23620, arising out of the same occurrence, both the suspension under Section 13353.2 and the suspension or revocation under Section 13352 shall be imposed, except that, notwithstanding Section 13354, the periods of suspension or revocation shall run concurrently, and the total period of suspension or revocation shall not exceed the longer of the two suspension or revocation periods. This subdivision shall not affect a suspension or revocation pursuant to Section 13353 for refusal to submit to chemical testing or the imposition of consecutive periods of suspension or revocation pursuant to Section 13354 for that refusal.

13353.4. (a) Except as provided in subdivision (b) of Section 13353.6, or Section 13353.7 or 13353.8, the driving privilege shall not be restored, and no restricted or hardship permit to operate a motor vehicle shall be issued, to a person during the suspension or revocation period specified in Section 13353, 13353.1, or 13353.3. (b) The privilege to operate a motor vehicle shall not be restored after a suspension or revocation pursuant to Section 13352, 13353, 13353.1, or 13353.2 until all applicable fees, including the fees prescribed in Section 14905, have been paid and the person gives proof of financial responsibility, as defined in Section 16430, to the department. (c) The privilege to operate a motor vehicle shall not be restored after a suspension or revocation pursuant to paragraphs (1) to (7), inclusive, of subdivision (a) of Section 13352 until the person gives proof satisfactory to the department of completion of a program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code. The program shall be of an appropriate length and scope, as determined by the number of prior convictions on that person's record for a violation of Section 23103, as specified in Section 23103.5, or of Section 23152 or 23153. The department shall restore the privilege to operate a motor vehicle after a suspension or revocation pursuant to paragraphs (1) to (7), inclusive, of subdivision (a) of Section 13352 upon receipt of a certification, under penalty of perjury, by the director of a program specified in Section 8001 of the Penal Code that the person has completed the program specified in Section 8001 of the Penal Code. (d) For purposes of this section, completion of a program is the satisfactory completion of all program requirements approved pursuant to program licensure, and any other court-imposed conditions, as evidenced by a certificate of completion issued by the licensed program. (e) Subdivision (d) does not apply to a person under the age of 21 years whose driving privilege has been suspended or revoked pursuant to the order of a court or pursuant to Section 13353, 13353.1, or 13353.2 for a violation of subdivision (a) of Section 23136 or of Section 23140.

13353.45. The department shall, in consultation with the State Department of Alcohol and Drug Programs, with representatives of the county alcohol program administrators, and with representatives of licensed drinking driver program providers, develop a certificate of completion for the purposes of Sections 13352.4 and 13353.4 and shall develop, implement, and maintain a system for safeguarding the certificates against misuse. The department may charge a reasonable fee for each blank completion certificate distributed to a drinking driver program. The fee shall be sufficient to cover, but shall not exceed, the costs incurred in administering this section, Section 13352.4, and subdivision (c) of Section 13353.4 or twelve dollars (\$12) per person, whichever is less.

13353.5. (a) Notwithstanding subdivision (c) or (d) of Section 13353.4, if a person whose driving privilege is suspended or revoked under Section 13352 or 13352.4 is a resident of another state at the time the mandatory period of suspension or revocation expires, the department may, upon written application of the person, terminate the suspension or revocation for the purpose of allowing the person to apply for a license in his or her state of residence. The application shall include, but not be limited to, evidence satisfactory to the department that the applicant now resides in another state. (b) If the person submits an application for a California driving license within three years after the date of the action to terminate suspension or revocation pursuant to subdivision (a), a license shall not be issued until evidence satisfactory to the department establishes that the person is qualified for reinstatement and no grounds exist including, but not limited to, one or more subsequent convictions for driving under the influence of alcohol or other drugs, that would authorize the refusal to issue a license. The department may waive the three-year requirement upon receipt of a program completion certificate, as described in subdivision (c) of Section 13353.4, that has been duly issued to the individual.

13353.6. (a) If the person's driver's license is a commercial driver's license, as defined in Section 15210, and if the person has not had a separate violation of Section 23103 as specified in Section 23103.5, Section 23152, or Section 23153 of this code, or Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code which resulted in a conviction, and if the person's privilege to operate a motor vehicle has not been previously suspended or revoked pursuant to Section 13353 or 13353.2 for an offense which occurred on a separate occasion, notwithstanding Section 13551, the department shall, upon receiving the officer's sworn statement and the receipt of the person's driver's license and after review pursuant to subdivision (d) of Section 13353.2, suspend the person's privilege to operate a motor vehicle for 30 days, and then reissue the person a commercial driver's license and endorsements with restrictions, as follows: (1) The restricted commercial driver's license shall authorize the operation of a motor vehicle only to and from, and in the course and scope of, the person's employment. (2) The term of the restricted license is 30 days after the date that the order of suspension is effective pursuant to Section 13353.3 until six months after that date. (b) The person may be issued an unrestricted commercial driver's license after the term of restriction under this section. (c) This section applies only to the holder of a commercial driver's license who was not operating a commercial vehicle, as defined in Section 15210, at the time of the offense.

13353.7. (a) Subject to subdivision (c) and except as provided in Section 13353.6 for persons who have commercial driver's licenses, if the person whose driving privilege has been suspended under Section 13353.2 has not been convicted of, or found to have committed, a separate violation of Section 23103, as specified in Section 23103.5, Section 23140, 23152, or 23153 of this code, or Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, and if the person's privilege to operate a motor vehicle has not been suspended or revoked pursuant to Section 13353 or 13353.2 for an offense which occurred on a separate occasion within seven years of the occasion in question and, if the person subsequently enrolls in a program described in Section 11837.3 of the Health and Safety Code, pursuant to subdivision (b) of Section 23161, that person, if 21 years of age or older at the time the offense occurred, may apply to the department for a restricted driver's license limited to travel to and from the activities required by the program or to and from and in the course of the person's employment, or both. Notwithstanding any other provision of law, if the person's restricted driver's license permits travel to and from and in the course of his or her employment, the person's privilege to operate a motor vehicle shall be suspended, subject to the restriction, for six months. After receiving proof of enrollment in the program, and if the person has not been arrested subsequent to the offense for which the person's driving privilege has been suspended under Section 13353.2 for a violation of Section 23103, as specified in Section 23103.5, Section 23140, 23152, or 23153 of this code, or Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, and if the person's privilege to operate a motor vehicle has not been suspended or revoked pursuant to Section 13353 or 13353.2 for an offense which occurred on a separate occasion, notwithstanding Section 13551, the department shall, after review pursuant to Section 13557, suspend the person's privilege to operate a motor vehicle for 30 days and then issue the person a restricted driver's license under the following conditions: (1) The program shall report any failure to participate in the program to the department and shall certify successful completion of the program to the department. (2) The person was 21 years of age or older at the time the offense occurred and gives proof of financial responsibility as defined in Section 16430. (3) The restricted driver's license authorizes the operation of a motor vehicle only to and from the activities required under the program. (4) If any person who has been issued a restricted license under this section fails at any time to participate in the program, the department shall suspend the restricted license immediately. The department shall give notice of the suspension under this paragraph in the same manner as prescribed in subdivision (b) of Section 13353.2 for the period specified in Section 13353.3, which is effective upon receipt by the person. (5) On or after 60 days after the effective date of the restricted license, and upon notification of successful completion of the program, the department may issue an unrestricted driver's license to the person. (b) If the court of jurisdiction in a criminal action arising out of the same offense orders the department to suspend or revoke the person's privilege to operate a motor vehicle or does not grant probation after conviction of that offense, notwithstanding subdivision (a), the department shall suspend or revoke the person's privilege pursuant to the order of the court or Section 13352. (c) If the holder of a commercial driver's license was operating a commercial vehicle, as defined in Section 15210, at the time of the violation which resulted in the suspension of that person's driving privilege under Section 13353.2, the department shall, pursuant to this section, if the person is otherwise eligible, issue the person a class C driver's license restricted in the same manner and subject to the same conditions as specified in subdivision (a), except that the license shall not allow travel to and from or in the course of the person's employment. (d) This section does not apply to a person whose driving privilege has been suspended or revoked pursuant to the order of the court or Section 13353 or 13353.2 for an offense which occurred on a separate occasion, or as a result of a conviction of a separate violation of Section 23103, as specified in Section 23103.5, or Section 23140, 23152, or 23153, which violation occurred within seven years of the offense in question. This subdivision shall be operative only so long as a one-year suspension of the driving privilege for a second or subsequent occurrence or offense, with no restricted or hardship licenses permitted, is required by Section 408 or 410 of Title 23 of the United States Code.

13353.7. (a) Subject to subdivision (c) and except as provided in Section 13353.6 for persons who have commercial driver's licenses, if the person whose driving privilege has been suspended under Section 13353.2 has not been convicted of, or found to have committed, a separate violation of Section 23103, as specified in Section 23103.5, Section 23140, 23152, or 23153 of this code, or Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, and if the person's privilege to operate a motor vehicle has not been suspended or revoked pursuant to Section 13353 or 13353.2 for an offense which occurred on a separate occasion within seven years of the occasion in question and, if the person subsequently enrolls in a program described in Section 11837.3 of the Health and Safety Code, pursuant to subdivision (b) of Section 23538, that person, if 21 years of age or older at the time the offense occurred, may apply to the department for a restricted driver's license limited to travel to and from the activities required by the program or to and from and in the course of the person's employment, or both. Notwithstanding any other provision of law, if the person's restricted driver's license permits travel to and from and in the course of his or her employment, the person's privilege to operate a motor vehicle shall be suspended, subject to the restriction, for six months. After receiving proof of enrollment in the program, and if the person has not been arrested subsequent to the offense for which the person's driving privilege has been suspended under Section 13353.2 for

a violation of Section 23103, as specified in Section 23103.5, Section 23140, 23152, or 23153 of this code, or Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, and if the person's privilege to operate a motor vehicle has not been suspended or revoked pursuant to Section 13353 or 13353.2 for an offense which occurred on a separate occasion, notwithstanding Section 13551, the department shall, after review pursuant to Section 13557, suspend the person's privilege to operate a motor vehicle for 30 days and then issue the person a restricted driver's license under the following conditions: (1) The program shall report any failure to participate in the program to the department and shall certify successful completion of the program to the department. (2) The person was 21 years of age or older at the time the offense occurred and gives proof of financial responsibility as defined in Section 16430. (3) The restricted driver's license authorizes the operation of a motor vehicle only to and from the activities required under the program. (4) If any person who has been issued a restricted license under this section fails at any time to participate in the program, the department shall suspend the restricted license immediately. The department shall give notice of the suspension under this paragraph in the same manner as prescribed in subdivision (b) of Section 13353.2 for the period specified in Section 13353.3, which is effective upon receipt by the person. (5) On or after 60 days after the effective date of the restricted license, and upon notification of successful completion of the program, the department may issue an unrestricted driver's license to the person. (b) If the court of jurisdiction in a criminal action arising out of the same offense orders the department to suspend or revoke the person's privilege to operate a motor vehicle or does not grant probation after conviction of that offense, notwithstanding subdivision (a), the department shall suspend or revoke the person's privilege pursuant to the order of the court or Section 13352. (c) If the holder of a commercial driver's license was operating a commercial vehicle, as defined in Section 15210, at the time of the violation which resulted in the suspension of that person's driving privilege under Section 13353.2, the department shall, pursuant to this section, if the person is otherwise eligible, issue the person a class C driver's license restricted in the same manner and subject to the same conditions as specified in subdivision (a), except that the license shall not allow travel to and from or in the course of the person's employment. (d) This section does not apply to a person whose driving privilege has been suspended or revoked pursuant to the order of the court or Section 13353 or 13353.2 for an offense which occurred on a separate occasion, or as a result of a conviction of a separate violation of Section 23103, as specified in Section 23103.5, or Section 23140, 23152, or 23153, which violation occurred within seven years of the offense in question. This subdivision shall be operative only so long as a one-year suspension of the driving privilege for a second or subsequent occurrence or offense, with no restricted or hardship licenses permitted, is required by Section 408 or 410 of Title 23 of the United States Code.

13353.8. (a) Notwithstanding any other provision of law, after the department has issued an order suspending or delaying driving privileges as a result of a violation of subdivision (a) of Section 23136, the department, upon petition of the person affected, may review the order and may impose restrictions on the person's privilege to drive based upon a showing of a critical need to drive.

(b) As used in this section, "critical need to drive" means the circumstances which are required to be shown for the issuance of a junior permit pursuant to Section 12513. (c) The restriction shall be imposed not earlier than the 31st day after the date the order of suspension became effective and shall remain in effect for the balance of the period of suspension or restriction in this section.

13354. (a) Notwithstanding Section 13366, if (1) an abstract of conviction is received by the department for an offense which requires the department to restrict, suspend, or revoke the privilege to operate a motor vehicle of a person after conviction or finding of a violation pursuant to Section 13352 or 13352.5, (2) there is a suspension of that person's privilege to operate a motor vehicle already in effect for refusal to consent to, or for failure to complete, a chemical test pursuant to Section 13353 or a suspension already in effect for driving with an excessive alcohol content in the person's blood pursuant to Section 13353.2, (3) that suspension is administratively final and resulted from the same arrest, and (4) the sentencing court orders these restrictions, suspensions, revocations, or a combination thereof to run consecutively, then the restriction, suspension, or revocation resulting from the conviction or finding pursuant to Section 13352 or 13352.5 shall commence after the suspension already in effect pursuant to Section 13353 or 13353.2 has terminated, except as provided in subdivision (c) of Section 13353.3. (b) Notwithstanding Section 13366, if (1) the department is required to suspend a person's privilege to operate a motor vehicle for refusal to consent to, or for failure to complete, a chemical test pursuant to Section 13353 or to suspend a person's privilege to operate a motor vehicle for driving with an excessive alcohol content in the person's blood pursuant to Section 13353.2, (2) there is a restriction, suspension, or revocation of the person's privilege to operate a motor vehicle already in effect for a conviction or finding of a violation pursuant to Section 13352 or 13352.5 which resulted from the same arrest, and (3) the sentencing court orders these restrictions, suspensions, revocations, or a combination thereof to run consecutively, then the suspension for refusal to consent to, or for failure to complete, the chemical test pursuant to

Section 13353 or the suspension of that person's privilege to operate a motor vehicle already in effect for driving with an excessive alcohol content in the person's blood pursuant to Section 13353.2 shall commence after the restriction, suspension, or revocation already in effect pursuant to Section 13352 or 13352.5 has terminated, except as provided in subdivision (c) of Section 13353.3. (c) The purpose of this section is to require that any suspension under Section 13353 or 13353.2 and any restriction, suspension or revocation under Section 13352 or 13352.5 resulting from the same arrest are cumulative and shall be imposed consecutively, if so ordered by the court.

13355. The department shall immediately suspend the privilege of any person to operate a motor vehicle upon receipt of a duly certified abstract of the record of any court showing that the person has been convicted of a violation of subdivision (b) of Section 22348, or upon a receipt of a report of a judge of a juvenile court, a juvenile traffic hearing officer, or a referee of a juvenile court showing that the person has been found to have committed a violation of subdivision (b) of Section 22348 under the following conditions and for the periods, as follows: (a) Upon a conviction or finding of an offense under subdivision (b) of Section 22348 which occurred within three years of a prior offense resulting in a conviction of an offense under subdivision (b) of Section 22348, the privilege shall be suspended for a period of six months, or the privilege shall be restricted for six months to necessary travel to and from the person's place of employment and, if driving a motor vehicle is necessary to perform the duties of the person's employment, restricted to driving within the person's scope of employment. (b) Upon a conviction or finding of an offense under subdivision (b) of Section 22348 which occurred within five years of two or more prior offenses resulting in convictions of offenses under subdivision (b) of Section 22348, the privilege shall be suspended for a period of one year, or the privilege shall be restricted for one year to necessary travel to and from the person's place of employment and, if driving a motor vehicle is necessary to perform the duties of the person's employment, restricted to driving within the person's scope of employment.

13357. Upon the recommendation of the court the department shall suspend or revoke the privilege to operate a motor vehicle of any person who has been found guilty of a violation of Section 10851.

13359. The department may suspend or revoke the privilege of any person to operate a motor vehicle upon any of the grounds which authorize the refusal to issue a license.

13360. Upon receiving satisfactory evidence of any violation of the restrictions of a driver's license, the department may suspend or revoke the same.

13361. The department may suspend the privilege of any person to operate a motor vehicle upon receipt of a duly certified abstract of the record of any court showing that the person has been convicted of any of the following crimes or offenses: (a) Failure to stop in the event of an accident resulting in damage to property only, or otherwise failing to comply with the requirements of Section 20002. (b) A second or subsequent conviction of reckless driving. (c) Manslaughter resulting from the operation of a motor vehicle as provided in paragraph (2) of subdivision (c) of Section 192 of the Penal Code. In any case under this section the department is authorized to require proof of ability to respond in damages as defined in Section 16430.

13362. The department may require the surrender to it of any driver's license which has been issued erroneously or which contains any erroneous or false statement, or which does not contain any notation required by law or by the department. In the event a licensee does not surrender the license upon proper demand, the department may suspend the licensee's privilege to operate a motor vehicle. The suspension shall continue until the correction of the license by the department or until issuance of another license or temporary license in lieu thereof.

13363. (a) The department may, in its discretion, except as provided in Chapter 6 (commencing with Section 15000) of Division 6, of this code, suspend or revoke the privilege of any resident or nonresident to drive a motor vehicle in this State upon receiving notice of the conviction of the person in a state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or the Dominion of Canada of an offense therein which, if committed in this State, would be grounds for the suspension or revocation of the privilege to operate a motor vehicle.

(b) Whenever any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or the Dominion of Canada reports the conviction of a violation in such place by a person licensed in this State, the department shall not give effect to such report pursuant to subdivision (a) of this section or Section 15023 unless the depart-

ment is satisfied that the law of such other place pertaining to the conviction is substantially the same as the law of this State pertaining to such conviction and that the description of the violation from which the conviction arose, is sufficient and that the interpretation and enforcement of such law are substantially the same in such other place as they are in this State.

13364. (a) Notwithstanding any other provision of this code, a person's privilege to operate a motor vehicle shall be suspended upon notification by a bank or financial institution that a check has been dishonored when that check was presented to the department for either of the following reasons: (1) In payment of a fine that resulted from an outstanding violation pursuant to Section 40508 or a suspension pursuant to Section 13365. (2) In payment of a fee or penalty owed by the person, if the fee or penalty is required by this code for the issuance, reissuance, or return of the person's driver's license after suspension, revocation, or restriction of the driving privilege. (b) The suspension shall remain in effect until payment of all fines, fees, and penalties is made to the department or to the court, as appropriate, and the person's driving record does not contain any notification of a court order issued pursuant to subdivision (a) of Section 42003 or of a violation of subdivision (a) or (b) of Section 40508. (c) No suspension imposed pursuant to this section shall become effective until 30 days after the mailing of a written notice of the intent to suspend. (d) The written notice of a suspension imposed pursuant to this section shall be delivered by certified mail. (e) If any personal check is offered in payment of fines described in paragraph (1) of subdivision (a) and is returned for any reason, the related notice issued pursuant to Section 40509 or 40509.5 shall be restored to the person's record. (f) Notwithstanding any other provision of law, any license that has been suspended pursuant to this section shall immediately be reinstated, and the fees and penalties waived, upon the submission of proof acceptable to the department that the check has been erroneously dishonored by the bank or financial institution.

13365. (a) Upon receipt of notification of a violation of subdivision (a) or (b) of Section 40508, the department shall take the following action: (1) If the notice is given pursuant to subdivision (a) or (b) of Section 40509, if the driving record of the person who is the subject of the notice contains one or more prior notifications of a violation issued pursuant to Section 40509 or 40509.5, and if the person's driving privilege is not currently suspended under this section, the department shall suspend the driving privilege of the person. (2) If the notice is given pursuant to subdivision (a) or (b) of Section 40509.5, and if the driving privilege of the person who is the subject of the notice is not currently suspended under this section, the department shall suspend the driving privilege of the person. (b) A suspension under this section shall not be effective before a date 60 days after the date of receipt, by the department, of the notice given specified in subdivision (a), and the notice of suspension shall not be mailed by the department before a date 30 days after receipt of the notice given specified in subdivision (a).

The suspension shall continue until the suspended person's driving record does not contain any notification of a violation of subdivision (a) or (b) of Section 40508.

13365.2. (a) Upon receipt of the notice required under subdivision (c) of Section 40509.5, the department shall suspend the driving privilege of the person upon whom notice was received and shall continue that suspension until receipt of the certificate required under that subdivision. (b) The suspension required under subdivision (a) shall become effective on the 45th day after the mailing of written notice by the department.

13365.5. (a) Upon receipt of a notification issued pursuant to Section 40509.1, the department shall suspend the person's privilege to operate a motor vehicle until compliance with the court order is shown or as prescribed in subdivision (c) of Section 12808. The suspension under this section shall not be effective until 45 days after the giving of written notice by the department. (b) This section does not apply to a notification of failure to comply with a court order issued for a violation enumerated in paragraph (1), (2), (3), (6), or (7) of subdivision (b) of Section 1803.

13366. Whenever in this code the department is required to suspend or revoke the privilege of a person to operate a motor vehicle upon the conviction of such person of violating this code, such suspension or revocation shall begin upon a plea, finding or verdict of guilty.

13367. For purposes of the suspension or revocation of any driver's license issued to a minor, the department shall not provide any lighter penalty than would be given to an adult under similar circumstances.

13368. The department, as a condition to the reinstatement of a suspended license or the issuance of a new license to an individual whose prior license has been revoked, may require the individual to attend the program authorized by the provisions of Section 1659.

13369. This section applies to the following endorsements and certificates: passenger transport vehicle, hazardous materials, schoolbus, school pupil activity bus, youth bus, general public paratransit vehicle, farm labor vehicle, and vehicle used for the transportation of developmentally disabled persons. (a) The department shall refuse to issue or renew, or shall revoke for any of the following causes, the certificate or endorsement of any person who: (1) Within the preceding three years, has committed any violation which results in a conviction assigned a violation point count of two or more, as defined in Section 12810 and 12810.5. The department shall not refuse to issue or renew, nor shall it revoke a person's hazardous materials or passenger transportation vehicle endorsement if the violation leading to the conviction occurred in the person's private vehicle and not in a commercial motor vehicle, as defined in Section 15210. (2) Within the preceding three years, has had his or her driving privilege suspended, revoked, or on probation for any reason involving unsafe operation of a motor vehicle. The department shall not refuse to issue or renew, nor shall it revoke, a person's hazardous materials or passenger transportation vehicle endorsement if the person's driving privilege has, within the preceding three years, been placed on probation only for any reason involving unsafe operation of a motor vehicle, or if Section 13353.6 applies. (b) The department may refuse to issue or renew, or may suspend or revoke the certificate or endorsement of any person who: (1) Within the preceding 12 months, has been involved as a driver in three accidents in which the driver caused or contributed to the causes of the accidents. (2) Within the preceding 24 months, as a driver, caused or contributed to the cause of an accident resulting in a fatality or serious injury or serious property damage in excess of five hundred dollars (\$500). (3) Has violated any provision of this code, or any rule or regulation pertaining to the safe operation of a vehicle for which the certificate or endorsement was issued. (4) Has violated any restriction of the certificate, endorsement, or commercial driver's license. (5) Has knowingly made a false statement or concealed a material fact on an application for a certificate or endorsement. (6) Has been determined by the department to be a negligent or incompetent operator. (7) Has demonstrated irrational behavior to the extent that a reasonable and prudent person would have reasonable cause to believe that the applicant's ability to perform the duties of a driver may be impaired. (8) Excessively or habitually uses, or is addicted to, alcoholic beverages, narcotics, or dangerous drugs. (9) Does not meet the minimum medical standards established or approved by the department. (c) The department may cancel the certificate or endorsement of any driver who: (1) Does not have a valid license of the appropriate class. (2) Has requested cancellation of the certificate or endorsement.

(3) Has failed to meet any of the requirements for issuance or retention of the certificate or endorsement, including, but not limited to, payment of the proper fee, submission of an acceptable medical report and fingerprint cards, and failure to meet prescribed training requirements. (4) Has had his or her driving privilege suspended or revoked for a cause involving other than the safe operation of a motor vehicle. (d) With regard to a violation, accident, or departmental action which occurred prior to January 1, 1991, subdivision (a) and paragraphs (1), (2), and (3) of subdivision (b) do not apply to a driver holding a valid passenger transport or hazardous materials endorsement, or a valid class 1 or class 2 license who is applying to convert that license to a class A or class B license with a passenger transport or hazardous materials endorsement, if the driver submits proof that he or she is currently employed operating vehicles requiring the endorsement, or a valid class 3 license who is applying for a class C license with a hazardous materials endorsement if the driver submits proof that he or she is currently employed operating vehicles requiring the endorsement. (e) Subdivision (d) does not apply to drivers applying for a schoolbus, school pupil activity bus, youth bus, general public paratransit vehicle, or farm labor vehicle certificate. (f) (1) Reapplication following denial or revocation under subdivision (a) or (b) may be made after a period of not less than one year from the effective date of denial or revocation, except in cases where a longer period of suspension or revocation is required by law. (2) Reapplication following cancellation under subdivision (d) may be made any time without prejudice.

13370. (a) The department shall deny or revoke a schoolbus, school pupil activity bus, general public paratransit vehicle, youth bus driver certificate, or a certificate for a vehicle used for the transportation of developmentally disabled persons if any of the following causes apply to the applicant or certificate holder: (1) Has been convicted of any sex offense as defined in Section 44010 of the Education Code. (2) Has been convicted, within the two years preceding the application date, of any offense specified in Section 11361.5 of the Health and Safety Code. (3) Has failed to meet prescribed testing or training requirements for certificate issuance. (b) The department may deny, suspend, or revoke a schoolbus, school pupil activity bus, general public paratransit vehicle, or youth bus driver certificate, or a certificate for a vehicle used for the transportation of developmentally disabled persons if any of the following causes apply to the applicant or certificate holder: (1) Has been convicted of any crime specified in Section 44424 of the Education Code within the seven years preceding the application date. This paragraph does not apply if denial is mandatory. (2) Has committed any act involving moral turpitude. (3) Has been convicted of any offense, not specified in this section and other than a sex offense, that is punishable as a felony, within the seven years preceding the application date. (4) Has been dismissed as a driver for a cause relating to pupil transportation safety. (5) Has been convicted, within the seven years preceding the application date, of any offense relating to the use, sale,



possession, or transportation of narcotics, habit-forming drugs, or dangerous drugs, except as provided in paragraph (3) of subdivision (a). (c) (1) Reapplication following denial or revocation under subdivision (a) or (b) may be made after a period of not less than one year from the effective date of denial or revocation. (2) An applicant or holder of a certificate may reapply for a certificate whenever a felony or misdemeanor conviction is reversed or dismissed. A termination of probation and dismissal of charges pursuant to Section 1203.4 of the Penal Code or a dismissal of charges pursuant to Section 1203.4a of the Penal Code is not a dismissal for purposes of this section.

13371. This section applies to schoolbus, school pupil activity bus, youth bus, general public paratransit vehicle certificates, and a certificate for a vehicle used for the transportation of developmentally disabled persons. (a) Any driver or applicant who has received a notice of denial, suspension, or revocation, may, within 15 days of the mailing date, submit to the department a written request for a hearing. Failure to demand a hearing within 15 days is a waiver of the right to a hearing. (1) Upon receipt by the department of the hearing request, the department may stay the action until a hearing is conducted and the final decision has been rendered by the Certificate Action Review Board pursuant to paragraph (2) of subdivision (d). The department shall not stay an action when there is reasonable cause to believe the stay would pose a significant risk to the safety of pupils being transported in a schoolbus, school pupil activity bus, youth bus, or persons being transported in a general public paratransit vehicle. (2) An applicant or driver is not entitled to a hearing whenever the action by the department is made mandatory by this article or any other applicable law or regulation except where the cause for denial is based on failure to meet medical standards or excessive and habitual use of or addiction to alcoholic beverages, narcotics, or dangerous drugs. (b) The department shall appoint a hearing officer to conduct the hearing in accordance with Section 14112. After the hearing, the hearing officer shall prepare and submit findings and recommendations to the department. (c) The department shall mail, as specified in Section 22, a copy of the hearing officer's findings and recommendations to the driver or applicant and to the driver or applicant's hearing representative, either of whom may file a statement of exception to the findings and recommendations within 24 days after the mailing date. (d) (1) The Certificate Action Review Board consists of the following three members: a chairperson appointed by the director of the department, a member appointed by the Commissioner of the California Highway Patrol, and a member appointed by the Superintendent of Public Instruction. (2) After a hearing, the board shall review the findings and recommendations of the hearing officer, and any statement of exception, and make a decision concerning disposition of the action taken by the department, which decision shall be final. At this stage, no evidence shall be heard that was not presented at the hearing, unless the person wishing to present the new evidence establishes, to the satisfaction of the board, that it could not have been obtained with due diligence prior to the hearing.

13372. (a) The department shall deny an ambulance driver certificate if any of the following apply to the applicant: (1) Is required to register as a sex offender under Section 290 of the Penal Code for any offense involving force, violence, threat, or intimidation. (2) Habitually or excessively uses or is addicted to narcotics or dangerous drugs. (3) Is on parole or probation for any felony, theft, or any crime involving force, violence, threat, or intimidation. (b) The department may deny an ambulance driver certificate if any of the following apply to the applicant: (1) Has been convicted during the preceding seven years of any offense punishable as a felony or has been convicted during that period of any theft. (2) Has committed any act involving moral turpitude, including fraud or intentional dishonesty for personal gain, within the preceding seven years. (3) Habitually and excessively uses intoxicating beverages. (4) Has been convicted within the preceding seven years of any offense relating to the use, sale, possession, or transportation of narcotics or addictive or dangerous drugs, or of any misdemeanor involving force, violence, threat, or intimidation. (5) Is on probation to the department for a cause involving the unsafe operation of a motor vehicle. (6) Within the three years immediately preceding the application has had his or her driver's license suspended or revoked by the department for a cause involving the unsafe operation of a motor vehicle, or, within the same period, has been convicted of any of the following: (A) Failing to stop and render aid in an accident involving injury or death. (B) Driving under the influence of intoxicating liquor, any drug, or under the combined influence of intoxicating liquor and any drug.

(C) Reckless driving, or reckless driving involving bodily injury.

(7) Has knowingly falsified or failed to disclose a material fact in his and her application. Applicants refused certification under this provision shall not be issued an ambulance driver certificate within 12 months of that refusal. (8) Has been involved as a driver in any motor vehicle accident causing death or bodily injury or in three or more motor vehicle accidents during the preceding one-year period. (9) Does not meet minimum medical standards specified in this code or in regulations adopted pursuant to this code. (10) Has demonstrated irrational behavior or incurred a physical disability to the extent that a reasonable and prudent person would have reasonable cause to believe that the ability to perform the duties normally

expected of an ambulance driver may be impaired. (11) Has violated any provision of this code or any rule or regulation adopted by the Commissioner of the California Highway Patrol relating to the operation of emergency ambulances during the preceding one-year period. (12) Has committed any act that warrants dismissal, as provided in Section 13373. (c) The department may revoke or suspend the ambulance driver certificate of any person who gives any cause, before or after issuance of the certificate, for either mandatory or discretionary refusal of certification.

13373. The receipt of satisfactory evidence of any violation of Article 1 (commencing with Section 1100) of Subchapter 5 of Chapter 2 of Title 13 of the California Code of Regulations, the Vehicle Code, or any other applicable law that would provide grounds for denial, suspension, or revocation of an ambulance driver's certificate or evidence of an act committed involving intentional dishonesty for personal gain or conduct contrary to justice, honesty, modesty, or good morals, may be sufficient cause for the dismissal of any ambulance driver or attendant. Dismissal of a driver or attendant under this section shall be reported by the employer to the Department of Motor Vehicles at Sacramento within 10 days.

13374. (a) Whenever the department refuses to issue or renew, or suspends or revokes, an ambulance driver certificate for any cause, the person involved may, within 10 days after receiving notification of the action, submit a written request for a hearing. Upon receipt of the request, the department shall appoint a referee who shall conduct an informal hearing in accordance with Section 14104. Failure to request a hearing within 10 days after receiving a notice given under this section is a waiver of the right to a hearing. A request for a hearing shall not operate to stay the action for which notice is given. (b) Upon conclusion of an informal hearing, the referee shall prepare and submit findings and recommendations through the department to a committee of three members one each appointed by the Director of the Emergency Medical Service Authority, the director, and the Commissioner of the California Highway Patrol with the appointee of the Commissioner of the California Highway Patrol serving as chairperson. After a review of the findings and recommendations, the committee shall render a final decision on the action taken, and the department shall notify the person involved of the decision.

13375. For the purposes of this article, any plea or verdict of guilty, plea of nolo contendere, or court finding of guilt in a trial without a jury, or forfeiture of bail, is deemed a conviction, notwithstanding subsequent action under Section 1203.4 or 1203.4a of the Penal Code allowing withdrawal of the plea of guilty and entering a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation or information.

13376. (a) The department shall revoke a schoolbus, school pupil activity bus, youth bus, or general public paratransit driver certificate, and shall deny an application for that certificate, for any of the following causes: (1) The applicant or certificate holder has been convicted of any sex offense as defined in Section 44010 of the Education Code. (2) The applicant has, within the three years preceding the application date, either been convicted of a violation of Section 20001, 23103, 23104, 23152, or 23153, or has his or her driving privilege suspended, revoked, or placed on probation by the department for a cause involving the safe operation of a motor vehicle. (3) The applicant has, within the two years preceding the application date, been convicted of any offense specified in Section 11361.5 of the Health and Safety Code. (4) The applicant has failed to meet the prescribed testing requirements for issuance of the certificate. (b) (1) The department shall revoke a certificate listed in subdivision (a), following an opportunity to challenge the validity of the testing described in this paragraph, for three years if the certificate holder has received a positive test result for a controlled substance, as specified in Part 382 (commencing with Section 382.101) of Title 49 of the Code of Federal Regulations and Section 34520. However, the department shall not revoke a certificate under this paragraph if the certificate holder is in compliance with any rehabilitation or return to duty program that is imposed by the employer that meets the controlled substances and alcohol use and testing requirements set forth in Part 382 (commencing with Section 382.101) of Title 49 of the Code of Federal Regulations. (2) If an applicant receives a positive test result and has been provided an opportunity to challenge the validity of the test, the department shall deny the application for a certificate listed in subdivision (a) for three years from the date of the confirmed positive test result. (3) The carrier that requested the test shall report the positive test result to the department not later than five days after receiving notification of the test result on a form approved by the department. (4) The department shall maintain a positive test result reported under paragraph (3) in the driving record of the applicant or certificate holder for three years from the date the department receives the report. (c) (1) The department may temporarily suspend a schoolbus, school pupil activity bus, youth bus, or general public paratransit driver certificate, or temporarily withhold issuance of a certificate to an applicant, if the holder or applicant is arrested for or charged with any sex offense, as defined in Section 44010 of the Education Code.

(2) Upon receipt of a notice of temporary suspension, or of the department's intent to withhold issuance, of a certificate, the certificate holder or applicant may request a hearing within 10 days of the effective date of the department's action. (3)

The department shall, upon request of the holder of, or applicant for, a certificate, within 10 working days of the receipt of the request, conduct a hearing on whether the public interest requires suspension or withholding of the certificate pursuant to paragraph (1). (4) If the charge is dismissed or results in a finding of not guilty, the department shall immediately terminate the suspension or resume the application process, and shall expunge the suspension action taken pursuant to this subdivision from the record of the applicant or certificate holder. (d) An applicant or holder of a certificate may reapply for a certificate whenever a felony or misdemeanor conviction is reversed or dismissed. A termination of probation and dismissal of charges pursuant to Section 1203.4 of the Penal Code or a dismissal of charges pursuant to Section 1203.4a of the Penal Code is not a dismissal for purposes of this section. (e) The determination of the facts pursuant to this section is a civil matter which is independent of the determination of the person's guilt or innocence, has no collateral estoppel effect on a subsequent criminal prosecution, and does not preclude the litigation of the same or similar facts in a criminal proceeding.

13377. (a) The department shall not issue or renew, or shall revoke, the tow truck driver certificate of an applicant or holder for any of the following causes: (1) The tow truck driver certificate applicant or holder has been convicted of a violation of Section 220 of the Penal Code. (2) The tow truck driver certificate applicant or holder has been convicted of a violation of paragraph (1), (2), (3), or (4) of subdivision (a) of Section 261 of the Penal Code. (3) The tow truck driver certificate applicant or holder has been convicted of a violation of Section 264.1, 267, 288, or 289 of the Penal Code. (4) The tow truck driver certificate applicant or holder has been convicted of any felony or three misdemeanors which are crimes of violence, as defined in subdivision (i) of Section 11105.3 of the Penal Code. (5) The tow truck driver certificate applicant's or holder's driving privilege has been suspended or revoked in accordance with any provisions of this code. (b) For purposes of this section, a conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere. For purposes of this section, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, is conclusive evidence of the conviction. (c) Whenever the department receives information from the Department of Justice, or the Federal Bureau of Investigation, that a tow truck driver has been convicted of an offense specified in paragraph (1), (2), (3), or (4) of subdivision (a), the department shall immediately notify the employer and the Department of the California Highway Patrol. (d) An applicant or holder of a tow truck driver certificate, whose certificate was denied or revoked, may reapply for a certificate whenever the applicable felony or misdemeanor conviction is reversed or dismissed. If the cause for the denial or revocation was based on the suspension or revocation of the applicant's or holder's driving privilege, he or she may reapply for a certificate upon restoration of his or her driving privilege. A termination of probation and dismissal of charges pursuant to Section 1203.4 of the Penal Code or a dismissal of charges pursuant to 1203.4(a) of the Penal Code is not a dismissal for purposes of this section.

13378. (a) Any applicant for, or holder of, a tow truck driver certificate who has received a notice of denial or revocation, may, within 15 days of the mailing of the notice, submit to the department a written request for a hearing. Failure to request a hearing, in writing, within 15 days is a waiver of the right to a hearing. (b) Upon receipt by the department of the hearing request, the department may stay the action until a hearing is conducted and the final decision is made by the hearing officer. The department shall not stay the action when there is reasonable cause to believe that the stay would pose a threat to a member of the motoring public who may require the services of the tow truck driver in question. (c) An applicant for, or a holder of, a tow truck driver certificate, whose certificate has been denied or revoked, is not entitled to a hearing whenever the action by the department is made mandatory by this article or any other applicable law or regulation.

(d) Upon receipt of a request for a hearing, and when the requesting party is entitled to a hearing under this article, the department shall appoint a hearing officer to conduct a hearing in accordance with Section 14112.

13380. (a) If a peace officer serves a notice of an order of suspension pursuant to Section 13388, or arrests any person for a violation of Section 23140, 23152, or 23153, the peace officer shall immediately forward to the department a sworn report of all information relevant to the enforcement action, including information that adequately identifies the person, a statement of the officer's grounds for belief that the person violated Section 23136, 23140, 23152, or 23153, a report of the results of any chemical tests that were conducted on the person or the circumstances constituting a refusal to submit to or complete the chemical testing pursuant to Section 13388 or 23612, a copy of any notice to appear under which the person was released from custody, and, if immediately available, a copy of the complaint filed with the court. For the purposes of this section and subdivision (g) of Section 23612, "immediately" means on or before the end of the fifth ordinary business day following the arrest, except that with respect to Section 13388 only, "immediately" has the same meaning as that term is defined in paragraph (3) of subdivision (b) of Section 13388. (b) The peace officer's sworn report shall be made on forms furnished or approved by the department. (c) For the purposes of this section, a report prepared pursuant to subdivision (a) and received

pursuant to subdivision (a) of Section 1801, is a sworn report when it bears an entry identifying the maker of the document or a signature that has been affixed by means of an electronic device approved by the department.

13382. (a) If the chemical test results for a person who has been arrested for a violation of Section 23152 or 23153 show that the person has 0.08 percent or more, by weight, of alcohol in the person's blood, or if the chemical test results for a person who has been arrested for a violation of Section 23140 show that the person has 0.05 percent or more, by weight, of alcohol in the person's blood, the peace officer, acting on behalf of the department, shall serve a notice of order of suspension or revocation of the person's privilege to operate a motor vehicle personally on the arrested person. (b) If the peace officer serves the notice of order of suspension or revocation, the peace officer shall take possession of any driver's license issued by this state which is held by the person. When the officer takes possession of a valid driver's license, the officer shall issue, on behalf of the department, a temporary driver's license. The temporary driver's license shall be an endorsement on the notice of the order of suspension or revocation and shall be valid for 30 days from the date of arrest. (c) The peace officer shall immediately forward a copy of the completed notice of order of suspension form, and any driver's license taken into possession under subdivision (b), with the report required by Section 13380, to the department. For the purposes of this section, "immediately" means on or before the end of the fifth ordinary business day following the arrest.

13384. (a) The department shall not issue or renew a driver's license to any person unless the person consents in writing to submit to a chemical test or tests of that person's blood, breath, or urine pursuant to Section 23612, or a preliminary alcohol screening test pursuant to Section 23136, when requested to do so by a peace officer. (b) All application forms for driver's licenses or driver's license renewal notices shall include a requirement that the applicant sign the following declaration as a condition of licensure:

"I agree to submit to a chemical test of my blood, breath, or urine for the purpose of determining the alcohol or drug content of my blood when testing is requested by a peace officer acting in accordance with Section 13388 or 23612 of the Vehicle Code." (c) The department is not, incident to this section, required to maintain, copy, or store any information other than that to be incorporated into the standard application form.

13388. (a) If a peace officer lawfully detains a person under 21 years of age who is driving a motor vehicle, and the officer has reasonable cause to believe that the person is in violation of Section 23136, the officer shall request that the person take a preliminary alcohol screening test to determine the presence of alcohol in the person, if a preliminary alcohol screening test device is immediately available. If a preliminary alcohol screening test device is not immediately available, the officer may request the person to submit to chemical testing of his or her blood, breath, or urine, conducted pursuant to Section 23612. (b) If the person refuses to take, or fails to complete, the preliminary alcohol screening test or refuses to take or fails to complete a chemical test if a preliminary alcohol device is not immediately available, or if the person takes the preliminary alcohol screening test and that test reveals a blood-alcohol concentration of 0.01 percent or greater, or if the results of a chemical test reveal a blood-alcohol concentration of 0.01 percent or greater, the officer shall proceed as follows: (1) The officer, acting on behalf of the department, 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. When the officer takes possession of a valid driver's license, the officer shall issue, on behalf of the department, a temporary driver's license. The temporary driver's license shall be an endorsement on the notice of the order of suspension and shall be valid for 30 days from the date of issuance, or until receipt of the order of suspension from the department, whichever occurs first. (3) The officer immediately shall forward a copy of the completed notice of order of suspension form, and any driver's license taken into possession under paragraph (2), with the report required by Section 13380, to the department. For the purposes of this paragraph, "immediately" means on or before the end of the fifth ordinary business day after the notice of order of suspension was served. (c) For the purposes of this section, a preliminary alcohol screening test device is an instrument designed and used to measure the presence of alcohol in a person based on a breath sample.

13390. Notwithstanding Section 40000.1, a violation of Section 23136 is neither an infraction nor a public offense, as defined in Section 15 of the Penal Code. A violation of Section 23136 is only subject to civil penalties. Those civil penalties shall be administered by the department through the civil administrative procedures set forth in this code.

13392. Any person whose license is suspended or delayed issuance pursuant to Section 13388 shall pay to the department, in addition to any other fees required for the reissuance, return, or issuance of a driver's license, one hundred dollars (\$100) for the reissuance, return, or issuance of his or her driver's license.

## Florida

### 316.193 Driving under the influence; penalties.—

- (1) A person is guilty of the offense of driving under the influence and is subject to punishment as provided in subsection (2) if the person is driving or in actual physical control of a vehicle within this state and:
  - (a) The person is under the influence of alcoholic beverages, any chemical substance set forth in s. 877.111, or any substance controlled under chapter 893, when affected to the extent that the person's normal faculties are impaired;
  - (b) The person has a blood-alcohol level of 0.08 or more grams of alcohol per 100 milliliters of blood; or
  - (c) The person has a breath-alcohol level of 0.08 or more grams of alcohol per 210 liters of breath.
- (2)(a) Except as provided in paragraph (b), subsection (3), or subsection (4), any person who is convicted of a violation of subsection (1) shall be punished:
  1. By a fine of:
    - a. Not less than \$250 or more than \$500 for a first conviction.
    - b. Not less than \$500 or more than \$1,000 for a second conviction; and
  2. By imprisonment for:
    - a. Not more than 6 months for a first conviction.
    - b. Not more than 9 months for a second conviction.
  3. For a second conviction, by mandatory placement for a period of at least 1 year, at the convicted person's sole expense, of an ignition interlock device approved by the department in accordance with s. 316.1938 upon all vehicles that are individually or jointly leased or owned and routinely operated by the convicted person, when the convicted person qualifies for a permanent or restricted license. The installation of such device may not occur before July 1, 2003.
- (b)1. Any person who is convicted of a third violation of this section for an offense that occurs within 10 years after a prior conviction for a violation of this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. In addition, the court shall order the mandatory placement for a period of not less than 2 years, at the convicted person's sole expense, of an ignition interlock device approved by the department in accordance with s. 316.1938 upon all vehicles that are individually or jointly leased or owned and routinely operated by the convicted person, when the convicted person qualifies for a permanent or restricted license. The installation of such device may not occur before July 1, 2003.
2. Any person who is convicted of a third violation of this section for an offense that occurs more than 10 years after the date of a prior conviction for a violation of this section shall be punished by a fine of not less than \$1,000 or more than \$2,500 and by imprisonment for not more than 12 months. In addition, the court shall order the mandatory placement for a period of at least 2 years, at the convicted person's sole expense, of an ignition interlock device approved by the department in accordance with s. 316.1938 upon all vehicles that are individually or jointly leased or owned and routinely operated by the convicted person, when the convicted person qualifies for a permanent or restricted license. The installation of such device may not occur before July 1, 2003.
3. Any person who is convicted of a fourth or subsequent violation of this section, regardless of when any prior conviction for a violation of this section occurred, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. However, the fine imposed for such fourth or subsequent violation may be not less than \$1,000.

(3) Any person:

(a) Who is in violation of subsection (1);

(b) Who operates a vehicle; and

(c) Who, by reason of such operation, causes or contributes to causing:

1. Damage to the property or person of another commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

2. Serious bodily injury to another, as defined in s. 316.1933, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. The death of any human being or unborn quick child commits DUI manslaughter, and commits:

a. A felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

b. A felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if:

(I) At the time of the crash, the person knew, or should have known, that the crash occurred; and

(II) The person failed to give information and render aid as required by s. 316.062.

For purposes of this subsection, the definition of the term “unborn quick child” shall be determined in accordance with the definition of viable fetus as set forth in s. 782.071. A person who is convicted of DUI manslaughter shall be sentenced to a mandatory minimum term of imprisonment of 4 years.

(4) Any person who is convicted of a violation of subsection (1) and who has a blood-alcohol level or breath-alcohol level of 0.20 or higher, or any person who is convicted of a violation of subsection (1) and who at the time of the offense was accompanied in the vehicle by a person under the age of 18 years, shall be punished:

(a) By a fine of:

1. Not less than \$500 or more than \$1,000 for a first conviction.

2. Not less than \$1,000 or more than \$2,000 for a second conviction.

3. Not less than \$2,000 for a third or subsequent conviction.

(b) By imprisonment for:

1. Not more than 9 months for a first conviction.

2. Not more than 12 months for a second conviction.

For the purposes of this subsection, only the instant offense is required to be a violation of subsection (1) by a person who has a blood-alcohol level or breath-alcohol level of 0.20 or higher.

(c) In addition to the penalties in paragraphs (a) and (b), the court shall order the mandatory placement, at the convicted person's sole expense, of an ignition interlock device approved by the department in accordance with s. 316.1938 upon all vehicles that are individually or jointly leased or owned and routinely operated by the convicted person for up to 6 months for the first offense and for at least 2 years for a second offense, when the convicted person qualifies for a permanent or restricted license. The installation of such device may not occur before July 1, 2003.

(5) The court shall place all offenders convicted of violating this section on monthly reporting probation and shall require completion of a substance abuse course conducted by a DUI program licensed by the department under s. 322.292, which must include a psychosocial evaluation of the offender. If the DUI program refers the offender to an authorized substance abuse treatment provider for substance abuse treatment, in addition to any sentence or fine imposed under this section, completion of all such education, evaluation, and treatment is a condition of reporting probation. The offender shall assume reasonable costs for such education, evaluation, and treatment. The referral to treatment resulting from a psychosocial evaluation shall not be waived without a supporting independent psychosocial evaluation conducted by an authorized substance abuse treatment provider appointed by the court, which shall have access to the DUI program's psychosocial evaluation before the independent psychosocial evaluation is conducted. The court shall review the results and recommendations of both evaluations before determining the request for waiver. The offender shall bear the full cost of this procedure. The term "substance abuse" means the abuse of alcohol or any substance named or described in Schedules I through V of s. 893.03. If an offender referred to treatment under this subsection fails to report for or complete such treatment or fails to complete the DUI program substance abuse education course and evaluation, the DUI program shall notify the court and the department of the failure. Upon receipt of the notice, the department shall cancel the offender's driving privilege, notwithstanding the terms of the court order or any suspension or revocation of the driving privilege. The department may temporarily reinstate the driving privilege on a restricted basis upon verification from the DUI program that the offender is currently participating in treatment and the DUI education course and evaluation requirement has been completed. If the DUI program notifies the department of the second failure to complete treatment, the department shall reinstate the driving privilege only after notice of completion of treatment from the DUI program. The organization that conducts the substance abuse education and evaluation may not provide required substance abuse treatment unless a waiver has been granted to that organization by the department. A waiver may be granted only if the department determines, in accordance with its rules, that the service provider that conducts the substance abuse education and evaluation is the most appropriate service provider and is licensed under chapter 397 or is exempt from such licensure. A statistical referral report shall be submitted quarterly to the department by each organization authorized to provide services under this section.

(6) With respect to any person convicted of a violation of subsection (1), regardless of any penalty imposed pursuant to subsection (2), subsection (3), or subsection (4):

(a) For the first conviction, the court shall place the defendant on probation for a period not to exceed 1 year and, as a condition of such probation, shall order the defendant to participate in public service or a community work project for a minimum of 50 hours; or the court may order instead, that any defendant pay an additional fine of \$10 for each hour of public service or community work otherwise required, if, after consideration of the residence or location of the defendant at the time public service or community work is required, payment of the fine is in the best interests of the state. However, the total period of probation and incarceration may not exceed 1 year. The court must also, as a condition of probation, order the impoundment or immobilization of the vehicle that was operated by or in the actual control of the defendant or any one vehicle registered in the defendant's name at the time of impoundment or immobilization, for a period of 10 days or for the unexpired term of any lease or rental agreement that expires within 10 days. The impoundment or immobilization must not occur concurrently with the incarceration of the defendant. The impoundment or immobilization order may be dismissed in accordance with paragraph (e), paragraph (f), paragraph (g), or paragraph (h).

(b) For the second conviction for an offense that occurs within a period of 5 years after the date of a prior conviction for violation of this section, the court shall order imprisonment for not less than 10 days. The court must also, as a condition of probation, order the impoundment or immobilization of all vehicles owned by the defendant at the time of impoundment or immobilization, for a period of 30 days or for the unexpired term of any lease or rental agreement that expires within 30 days. The impoundment or immobilization must not occur concurrently with the incarceration of the defendant and must occur concurrently with the driver's license revocation imposed under s. 322.28(2)(a)2. The impoundment or immobilization order may be dismissed in accordance with paragraph (e), paragraph (f), paragraph (g), or paragraph (h). At least 48 hours of confinement must be consecutive.

(c) For the third or subsequent conviction for an offense that occurs within a period of 10 years after the date of a prior conviction for violation of this section, the court shall order imprisonment for not less than 30 days. The court must also, as a condition of probation, order the impoundment or immobilization of all vehicles owned by the defendant at the time of impoundment or immobilization, for a period of 90 days or for the unexpired term of any lease or rental agreement that expires within 90 days. The impoundment or immobilization must not occur concurrently with the incarceration of the

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defendant and must occur concurrently with the driver's license revocation imposed under s. 322.28(2)(a)3. The impoundment or immobilization order may be dismissed in accordance with paragraph (e), paragraph (f), paragraph (g), or paragraph (h). At least 48 hours of confinement must be consecutive.

(d) The court must at the time of sentencing the defendant issue an order for the impoundment or immobilization of a vehicle. Within 7 business days after the date that the court issues the order of impoundment or immobilization, the clerk of the court must send notice by certified mail, return receipt requested, to the registered owner of each vehicle, if the registered owner is a person other than the defendant, and to each person of record claiming a lien against the vehicle.

(e) A person who owns but was not operating the vehicle when the offense occurred may submit to the court a police report indicating that the vehicle was stolen at the time of the offense or documentation of having purchased the vehicle after the offense was committed from an entity other than the defendant or the defendant's agent. If the court finds that the vehicle was stolen or that the sale was not made to circumvent the order and allow the defendant continued access to the vehicle, the order must be dismissed and the owner of the vehicle will incur no costs. If the court denies the request to dismiss the order of impoundment or immobilization, the petitioner may request an evidentiary hearing.

(f) A person who owns but was not operating the vehicle when the offense occurred, and whose vehicle was stolen or who purchased the vehicle after the offense was committed directly from the defendant or the defendant's agent, may request an evidentiary hearing to determine whether the impoundment or immobilization should occur. If the court finds that either the vehicle was stolen or the purchase was made without knowledge of the offense, that the purchaser had no relationship to the defendant other than through the transaction, and that such purchase would not circumvent the order and allow the defendant continued access to the vehicle, the order must be dismissed and the owner of the vehicle will incur no costs.

(g) The court shall also dismiss the order of impoundment or immobilization of the vehicle if the court finds that the family of the owner of the vehicle has no other private or public means of transportation.

(h) The court may also dismiss the order of impoundment or immobilization of any vehicles that are owned by the defendant but that are operated solely by the employees of the defendant or any business owned by the defendant.

(i) All costs and fees for the impoundment or immobilization, including the cost of notification, must be paid by the owner of the vehicle or, if the vehicle is leased or rented, by the person leasing or renting the vehicle, unless the impoundment or immobilization order is dismissed. All provisions of s. 713.78 shall apply.

(j) The person who owns a vehicle that is impounded or immobilized under this paragraph, or a person who has a lien of record against such a vehicle and who has not requested a review of the impoundment pursuant to paragraph (e), paragraph (f), or paragraph (g), may, within 10 days after the date that person has knowledge of the location of the vehicle, file a complaint in the county in which the owner resides to determine whether the vehicle was wrongfully taken or withheld from the owner or lienholder. Upon the filing of a complaint, the owner or lienholder may have the vehicle released by posting with the court a bond or other adequate security equal to the amount of the costs and fees for impoundment or immobilization, including towing or storage, to ensure the payment of such costs and fees if the owner or lienholder does not prevail. When the bond is posted and the fee is paid as set forth in s. 28.24, the clerk of the court shall issue a certificate releasing the vehicle. At the time of release, after reasonable inspection, the owner or lienholder must give a receipt to the towing or storage company indicating any loss or damage to the vehicle or to the contents of the vehicle.

(k) A defendant, in the court's discretion, may be required to serve all or any portion of a term of imprisonment to which the defendant has been sentenced pursuant to this section in a residential alcoholism treatment program or a residential drug abuse treatment program. Any time spent in such a program must be credited by the court toward the term of imprisonment.

For the purposes of this section, any conviction for a violation of s. 327.35; a previous conviction for the violation of former s. 316.1931, former s. 860.01, or former s. 316.028; or a previous conviction outside this state for driving under the influence, driving while intoxicated, driving with an unlawful blood-alcohol level, driving with an unlawful breath-alcohol level, or any other similar alcohol-related or drug-related traffic offense, is also considered a previous conviction for violation of this section. However, in satisfaction of the fine imposed pursuant to this section, the court may, upon a finding that the defen-



dant is financially unable to pay either all or part of the fine, order that the defendant participate for a specified additional period of time in public service or a community work project in lieu of payment of that portion of the fine which the court determines the defendant is unable to pay. In determining such additional sentence, the court shall consider the amount of the unpaid portion of the fine and the reasonable value of the services to be ordered; however, the court may not compute the reasonable value of services at a rate less than the federal minimum wage at the time of sentencing.

(7) A conviction under this section does not bar any civil suit for damages against the person so convicted.

(8) At the arraignment, or in conjunction with any notice of arraignment provided by the clerk of the court, the clerk shall provide any person charged with a violation of this section with notice that upon conviction the court shall suspend or revoke the offender's driver's license and that the offender should make arrangements for transportation at any proceeding in which the court may take such action. Failure to provide such notice does not affect the court's suspension or revocation of the offender's driver's license.

(9) A person who is arrested for a violation of this section may not be released from custody:

(a) Until the person is no longer under the influence of alcoholic beverages, any chemical substance set forth in s. 877.111, or any substance controlled under chapter 893 and affected to the extent that his or her normal faculties are impaired;

(b) Until the person's blood-alcohol level or breath-alcohol level is less than 0.05; or

(c) Until 8 hours have elapsed from the time the person was arrested.

(10) The rulings of the Department of Highway Safety and Motor Vehicles under s. 322.2615 shall not be considered in any trial for a violation of this section. Testimony or evidence from the administrative proceedings or any written statement submitted by a person in his or her request for administrative review is inadmissible into evidence or for any other purpose in any criminal proceeding, unless timely disclosed in criminal discovery pursuant to Rule 3.220, Florida Rules of Criminal Procedure.

(11) The Department of Highway Safety and Motor Vehicles is directed to adopt rules providing for the implementation of the use of ignition interlock devices.

(12) If the records of the Department of Highway Safety and Motor Vehicles show that the defendant has been previously convicted of the offense of driving under the influence, that evidence is sufficient by itself to establish that prior conviction for driving under the influence. However, such evidence may be contradicted or rebutted by other evidence. This presumption may be considered along with any other evidence presented in deciding whether the defendant has been previously convicted of the offense of driving under the influence.

History.—s. 1, ch. 71-135; s. 19, ch. 73-331; s. 1, ch. 74-384; s. 1, ch. 76-31; s. 1, ch. 79-408; s. 1, ch. 80-343; s. 2, ch. 82-155; s. 1, ch. 82-403; s. 2, ch. 83-187; s. 1, ch. 83-228; s. 1, ch. 84-359; s. 24, ch. 85-167; s. 2, ch. 85-337; s. 1, ch. 86-296; s. 2, ch. 88-5; s. 5, ch. 88-82; s. 8, ch. 88-196; s. 8, ch. 88-324; s. 60, ch. 88-381; s. 7, ch. 89-3; ss. 1, 18, ch. 91-255; s. 32, ch. 92-78; ss. 1, 11, ch. 93-124; s. 3, ch. 93-246; s. 1, ch. 94-324; s. 895, ch. 95-148; s. 1, ch. 95-186; s. 4, ch. 95-333; s. 12, ch. 95-408; s. 3, ch. 96-330; s. 2, ch. 96-413; s. 48, ch. 97-100; s. 97, ch. 97-264; s. 25, ch. 97-271; ss. 6, 13, ch. 98-324; s. 5, ch. 99-234; s. 139, ch. 99-248; s. 4, ch. 2000-313; s. 10, ch. 2000-320; s. 2, ch. 2002-78; s. 1, ch. 2002-263; s. 1, ch. 2004-379; s. 1, ch. 2005-119; s. 3, ch. 2007-211.

Note.—Former s. 316.028.

## New York

### 1192. Operating a motor vehicle while under the influence of alcohol or drugs.

1. Driving while ability impaired. No person shall operate a motor vehicle while the person's ability to operate such motor vehicle is impaired by the consumption of alcohol.
2. Driving while intoxicated; per se. No person shall operate a motor vehicle while such person has .08 of one per centum or more by weight of alcohol in the person's blood as shown by chemical analysis of such person's blood, breath, urine or saliva, made pursuant to the provisions of section eleven hundred ninety-four of this article.
  - 2-a. Aggravated driving while intoxicated; per se. No person shall operate a motor vehicle while such person has .18 grams or more by weight of alcohol in such person's blood as shown by chemical analysis of such person's blood, breath, urine or saliva made pursuant to the provisions of section eleven hundred ninety-four of this article.
3. Driving while intoxicated. No person shall operate a motor vehicle while in an intoxicated condition.
4. Driving while ability impaired by drugs. No person shall operate a motor vehicle while the person's ability to operate such a motor vehicle is impaired by the use of a drug as defined in this chapter. 4-a. Driving while ability impaired by the combined influence of drugs or of alcohol and any drug or drugs. No person shall operate a motor vehicle while the person's ability to operate such motor vehicle is impaired by the combined influence of drugs or of alcohol and any drug or drugs.
5. Commercial motor vehicles: per se - level I. Notwithstanding the provisions of section eleven hundred ninety-five of this article, no person shall operate a commercial motor vehicle while such person has .04 of one per centum or more but not more than .06 of one per centum by weight of alcohol in the person's blood as shown by chemical analysis of such person's blood, breath, urine or saliva, made pursuant to the provisions of section eleven hundred ninety-four of this article; provided, however, nothing contained in this subdivision shall prohibit the imposition of a charge of a violation of subdivision one of this section, or of section eleven hundred ninety-two-a of this article where a person under the age of twenty-one operates a commercial motor vehicle where a chemical analysis of such person's blood, breath, urine, or saliva, made pursuant to the provisions of section eleven hundred ninety-four of this article, indicates that such operator has .02 of one per centum or more but less than .04 of one per centum by weight of alcohol in such operator's blood.
6. Commercial motor vehicles; per se - level II. Notwithstanding the provisions of section eleven hundred ninety-five of this article, no person shall operate a commercial motor vehicle while such person has more than .06 of one per centum but less than .08 of one per centum by weight of alcohol in the person's blood as shown by chemical analysis of such person's blood, breath, urine or saliva, made pursuant to the provisions of section eleven hundred ninety-four of this article; provided, however, nothing contained in this subdivision shall prohibit the imposition of a charge of a violation of subdivision one of this section.
7. Where applicable. The provisions of this section shall apply upon public highways, private roads open to motor vehicle traffic and any other parking lot. For the purposes of this section "parking lot" shall mean any area or areas of private property, including a driveway, near or contiguous to and provided in connection with premises and used as a means of access to and egress from a public highway to such premises and having a capacity for the parking of four or more motor vehicles. The provisions of this section shall not apply to any area or areas of private property comprising all or part of property on which is situated a one or two family residence.
8. Effect of prior out-of-state conviction. A prior out-of-state conviction for operating a motor vehicle while under the influence of alcohol or drugs shall be deemed to be a prior conviction of a violation of this section for purposes of determining penalties imposed under this section or for purposes of any administrative action required to be taken pursuant to subdivision two of section eleven hundred ninety-three of this article; provided, however, that such conduct, had it occurred in this state, would have constituted a misdemeanor or felony violation of any of the provisions of this section. Provided, however, that if such conduct, had it occurred in this state, would have constituted a violation of any provisions of this section which are not misdemeanor or felony offenses, then such conduct shall be deemed to be a prior conviction of a violation of subdivi-

sion one of this section for purposes of determining penalties imposed under this section or for purposes of any administrative action required to be taken pursuant to subdivision two of section eleven hundred ninety-three of this article.

8-a. Effect of prior finding of having consumed alcohol. A prior finding that a person under the age of twenty-one has operated a motor vehicle after having consumed alcohol pursuant to section eleven hundred ninety-four-a of this article shall have the same effect as a prior conviction of a violation of subdivision one of this section solely for the purpose of determining the length of any license suspension or revocation required to be imposed under any provision of this article, provided that the subsequent offense is committed prior to the expiration of the retention period for such prior offense or offenses set forth in paragraph (k) of subdivision one of section two hundred one of this chapter.

9. Conviction of a different charge. A driver may be convicted of a violation of subdivision one, two or three of this section, notwithstanding that the charge laid before the court alleged a violation of subdivision two or three of this section, and regardless of whether or not such conviction is based on a plea of guilty.

10. Plea bargain limitations.

(a) (i) In any case wherein the charge laid before the court alleges a violation of subdivision two, three, four or four-a of this section, any plea of guilty thereafter entered in satisfaction of such charge must include at least a plea of guilty to the violation of the provisions of one of the subdivisions of this section, other than subdivision five or six, and no other disposition by plea of guilty to any other charge in satisfaction of such charge shall be authorized; provided, however, if the district attorney, upon reviewing the available evidence, determines that the charge of a violation of this section is not warranted, such district attorney may consent, and the court may allow a disposition by plea of guilty to another charge in satisfaction of such charge; provided, however, in all such cases, the court shall set forth upon the record the basis for such disposition.

(ii) In any case wherein the charge laid before the court alleges a violation of subdivision two, three, four or four-a of this section, no plea of guilty to subdivision one of this section shall be accepted by the court unless such plea includes as a condition thereof the requirement that the defendant attend and complete the alcohol and drug rehabilitation program established pursuant to section eleven hundred ninety-six of this article, including any assessment and treatment required thereby; provided, however, that such requirement may be waived by the court upon application of the district attorney or the defendant demonstrating that the defendant, as a condition of the plea, has been required to enter into and complete an alcohol or drug treatment program prescribed pursuant to an alcohol or substance abuse screening or assessment conducted pursuant to section eleven hundred ninety-eight-a of this article or for other good cause shown. The provisions of this subparagraph shall apply, notwithstanding any bars to participation in the alcohol and drug rehabilitation program set forth in section eleven hundred ninety-six of this article; provided, however, that nothing in this paragraph shall authorize the issuance of a conditional license unless otherwise authorized by law.

(iii) In any case wherein the charge laid before the court alleges a violation of subdivision one of this section and the operator was under the age of twenty-one at the time of such violation, any plea of guilty thereafter entered in satisfaction of such charge must include at least a plea of guilty to the violation of such subdivision; provided, however, such charge may instead be satisfied as provided in paragraph (c) of this subdivision, and, provided further that, if the district attorney, upon reviewing the available evidence, determines that the charge of a violation of subdivision one of this section is not warranted, such district attorney may consent, and the court may allow a disposition by plea of guilty to another charge in satisfaction of such charge; provided, however, in all such cases, the court shall set forth upon the record the basis for such disposition.

(b) In any case wherein the charge laid before the court alleges a violation of subdivision one or six of this section while operating a commercial motor vehicle, any plea of guilty thereafter entered in satisfaction of such charge must include at least a plea of guilty to the violation of the provisions of one of the subdivisions of this section and no other disposition by plea of guilty to any other charge in satisfaction of such charge shall be authorized; provided, however, if the district attorney upon reviewing the available evidence determines that the charge of a violation of this section is not warranted, he may consent, and the court may allow, a disposition by plea of guilty to another charge in satisfaction of such charge.

(c) Except as provided in paragraph (b) of this subdivision, in any case wherein the charge laid before the court alleges a violation of subdivision one of this section by a person who was under the age of twenty-one at the time of commission of the offense, the court, with the consent of both parties, may allow the satisfaction of such charge by the defendant's agreement

to be subject to action by the commissioner pursuant to section eleven hundred ninety-four-a of this article. In any such case, the defendant shall waive the right to a hearing under section eleven hundred ninety-four-a of this article and such waiver shall have the same force and effect as a finding of a violation of section eleven hundred ninety-two-a of this article entered after a hearing conducted pursuant to such section eleven hundred ninety-four-a. The defendant shall execute such waiver in open court, and, if represented by counsel, in the presence of his attorney, on a form to be provided by the commissioner, which shall be forwarded by the court to the commissioner within ninety-six hours. To be valid, such form shall, at a minimum, contain clear and conspicuous language advising the defendant that a duly executed waiver: (i) has the same force and effect as a guilty finding following a hearing pursuant to section eleven hundred ninety-four-a of this article; (ii) shall subject the defendant to the imposition of sanctions pursuant to such section eleven hundred ninety-four-a; and (iii) may subject the defendant to increased sanctions upon a subsequent violation of this section or section eleven hundred ninety-two-a of this article. Upon receipt of a duly executed waiver pursuant to this paragraph, the commissioner shall take such administrative action and impose such sanctions as may be required by section eleven hundred ninety-four-a of this article.

(d) In any case wherein the charge laid before the court alleges a violation of subdivision two-a of this section, any plea of guilty thereafter entered in satisfaction of such charge must include at least a plea of guilty to the violation of the provisions of subdivision two, two-a or three of this section, and no other disposition by plea of guilty to any other charge in satisfaction of such charge shall be authorized; provided, however, if the district attorney, upon reviewing the available evidence, determines that the charge of a violation of this section is not warranted, such district attorney may consent and the court may allow a disposition by plea of guilty to another charge in satisfaction of such charge, provided, however, in all such cases, the court shall set forth upon the record the basis for such disposition. Provided, further, however, that no such plea shall be accepted by the court unless such plea includes as a condition thereof the requirement that the defendant attend and complete the alcohol and drug rehabilitation program established pursuant to section eleven hundred ninety-six of this article, including any assessment and treatment required thereby; provided, however, that such requirement may be waived by the court upon application of the district attorney or the defendant demonstrating that the defendant, as a condition of the plea, has been required to enter into and complete an alcohol or drug treatment program prescribed pursuant to an alcohol or substance abuse screening or assessment conducted pursuant to section eleven hundred ninety-eight-a of this article or for other good cause shown. The provisions of this paragraph shall apply, notwithstanding any bars to participation in the alcohol and drug rehabilitation program set forth in section eleven hundred ninety-six of this article; provided, however, that nothing in this paragraph shall authorize the issuance of a conditional license unless otherwise authorized by law.

11. No person other than an operator of a commercial motor vehicle may be charged with or convicted of a violation of subdivision five or six of this section. 12. Driving while intoxicated or while ability impaired by drugs—serious physical injury or death. In every case where a person is charged with a violation of subdivision two, two-a, three, four or four-a of this section, the law enforcement officer alleging such charge shall make a clear notation in the “Description of Violation” section of a simplified traffic information if, arising out of the same incident, someone other than the person charged was killed or suffered serious physical injury as defined in section 10.00 of the penal law; such notation shall be in the form of a “D” if someone other than the person charged was killed and such notation shall be in the form of a “S.P.I.” if someone other than the person charged suffered serious physical injury; provided, however, that the failure to make such notation shall in no way affect a charge for a violation of subdivision two, two-a, three, four or four-a of this section.

(Emphasis added above wherever bold and/or underlined.)

§1192-a. Operating a motor vehicle after having consumed alcohol; under the age of twenty-one; per se.

No person under the age of twenty-one shall operate a motor vehicle after having consumed alcohol as defined in this section. For purposes of this section, a person under the age of twenty-one is deemed to have consumed alcohol only if such person has .02 of one per centum or more but not more than .07 of one per centum by weight of alcohol in the person’s blood, as shown by chemical analysis of such person’s blood, breath, urine or saliva, made pursuant to the provisions of section eleven hundred ninety-four of this article. Any person who operates a motor vehicle in violation of this section, and who is not charged with a violation of any subdivision of section eleven hundred ninety-two of this article arising out of the same incident shall be referred to the department for action in accordance with the provisions of section eleven hundred ninety-four-a of this article. Except as otherwise provided in subdivision five of section eleven hundred ninety-two of this article, this section shall not apply to a person who operates a commercial motor vehicle. Notwithstanding any provision

of law to the contrary, a finding that a person under the age of twenty-one operated a motor vehicle after having consumed alcohol in violation of this section is not a judgment of conviction for a crime or any other offense.

(Emphasis added above wherever bold and/or underlined.)

#### §1193. Sanctions.

1. Criminal penalties. (a) Driving while ability impaired. A violation of subdivision one of section eleven hundred ninety-two of this article shall be a traffic infraction and shall be punishable by a fine of not less than three hundred dollars nor more than five hundred dollars or by imprisonment in a penitentiary or county jail for not more than fifteen days, or by both such fine and imprisonment. A person who operates a vehicle in violation of such subdivision after having been convicted of a violation of any subdivision of section eleven hundred ninety-two of this article within the preceding five years shall be punished by a fine of not less than five hundred dollars nor more than seven hundred fifty dollars, or by imprisonment of not more than thirty days in a penitentiary or county jail or by both such fine and imprisonment. A person who operates a vehicle in violation of such subdivision after having been convicted two or more times of a violation of any subdivision of section eleven hundred ninety-two of this article within the preceding ten years shall be guilty of a misdemeanor, and shall be punished by a fine of not less than seven hundred fifty dollars nor more than fifteen hundred dollars, or by imprisonment of not more than one hundred eighty days in a penitentiary or county jail or by both such fine and imprisonment.

A violation of section eleven hundred ninety-two of this article A person who operates a vehicle in violation of such subdivision after having been convicted of a violation of any subdivision of section eleven hundred ninety-two of this article within the preceding five years shall be punished by a fine of not less than five hundred dollars nor more than seven hundred fifty dollars, or by imprisonment of not more than thirty days in a penitentiary or county jail or by both such fine and imprisonment. A person who operates a vehicle in violation of such subdivision after having been convicted two or more times of a violation of any subdivision of section eleven hundred ninety-two of this article within the preceding ten years shall be guilty of a misdemeanor, and shall be punished by a fine of not less than seven hundred fifty dollars nor more than fifteen hundred dollars, or by imprisonment of not more than one hundred eighty days in a penitentiary or county jail or by both such fine and imprisonment.

(b) Driving while intoxicated or while ability impaired by drugs or while ability impaired by the combined influence of drugs or of alcohol and any drug or drugs; aggravated driving while intoxicated; misdemeanor offenses. A violation of subdivision two, three, four or four-a of section eleven hundred ninety-two of this article shall be a misdemeanor and shall be punishable by a fine of not less than five hundred dollars nor more than one thousand dollars, or by imprisonment in a penitentiary or county jail for not more than one year, or by both such fine and imprisonment.

A violation of subdivision two-a of section eleven hundred ninety-two of this article shall be a misdemeanor and shall be punishable by a fine of not less than one thousand dollars nor more than two thousand five hundred dollars or by imprisonment in a penitentiary or county jail for not more than one year, or by both such fine and imprisonment. In addition to the imposition of any fine or period of imprisonment set forth in this paragraph, the court shall require that any person who has been convicted of a violation of subdivision two-a of section eleven hundred ninety-two of this article and who is sentenced to a period of probation, to install and maintain, as a condition of such probation, a functioning ignition interlock device during the term of such probation; provided, however, the court may not authorize the operation of a motor vehicle by any person whose license or privilege to operate a motor vehicle has been revoked pursuant to the provisions of this section. (c) Felony offenses.

(i) A person who operates a vehicle in violation of subdivision two, two-a, three, four or four-a of section eleven hundred ninety-two of this article after having been convicted of a violation of subdivision two, two-a, three, four or four-a of such section or of vehicular assault in the second or first degree, as defined, respectively, in sections 120.03 and 120.04 of the penal law or of vehicular manslaughter in the second or first degree, as defined, respectively, in sections 125.12 and 125.13 of such law, within the preceding ten years, shall be guilty of a class E felony, and shall be punished by a fine of not less than one thousand dollars nor more than five thousand dollars or by a period of imprisonment as provided in the penal law, or by both such fine and imprisonment.

(ii) A person who operates a vehicle in violation of subdivision two, two-a, three, four or four-a of section eleven hundred ninety-two of this article after having been convicted of a violation of subdivision two, two-a, three, four or four-a of such section or of vehicular assault in the second or first degree, as defined, respectively, in sections 120.03 and 120.04 of the penal law or of vehicular manslaughter in the second or first degree, as defined, respectively, in sections 125.12 and 125.13 of such law, twice within the preceding ten years, shall be guilty of a class D felony, and shall be punished by a fine of not less than two thousand dollars nor more than ten thousand dollars or by a period of imprisonment as provided in the penal law, or by both such fine and imprisonment. (d) Alcohol or drug related offenses; special vehicles. (1) Except as provided in subparagraph four of this paragraph, a violation of subdivision one, two, three, four or four-a of section eleven hundred ninety-two of this article wherein the violator is operating a taxicab as defined in section one hundred forty-eight-a of this chapter, or livery as defined in section one hundred twenty-one-e of this chapter, and such taxicab or livery is carrying a passenger for compensation, or a truck with a GVWR of more than eighteen thousand pounds but not more than twenty-six thousand pounds and which is not a commercial motor vehicle shall be a misdemeanor punishable by a fine of not less than five hundred dollars nor more than fifteen hundred dollars or by a period of imprisonment as provided in the penal law, or by both such fine and imprisonment. A violation of subdivision two-a of section eleven hundred ninety-two of this article wherein the violator is operating a taxicab as defined in section one hundred forty-eight-a of this chapter, or livery as defined in section one hundred twenty-one-e of this chapter, and such taxicab or livery is carrying a passenger for compensation, or a truck with a GVWR of more than eighteen thousand pounds but not more than twenty-six thousand pounds and which is not a commercial motor vehicle shall be a class E felony punishable by a fine of not less than one thousand dollars nor more than five thousand dollars or by a period of imprisonment as provided in the penal law, or by both such fine and imprisonment.

(1-a) A violation of subdivision one of section eleven hundred ninety-two of this article wherein the violator is operating a school bus as defined in section one hundred forty-two of this chapter and such school bus is carrying at least one student passenger shall be a misdemeanor punishable by a fine of not less than five hundred dollars nor more than fifteen hundred dollars or by a period of imprisonment as provided in the penal law, or by both such fine and imprisonment.

(2) A violation of subdivision five of section eleven hundred ninety-two of this article shall be a traffic infraction punishable as provided in paragraph (a) of this subdivision. Except as provided in subparagraph three or five of this paragraph, a violation of subdivision one, two, three, four, four-a or six of section eleven hundred ninety-two of this article wherein the violator is operating a commercial motor vehicle, or any motor vehicle registered or registerable under schedule F of subdivision seven of section four hundred one of this chapter shall be a misdemeanor. A violation of subdivision one, two, three, four or four-a of section eleven hundred ninety-two of this article shall be punishable by a fine of not less than five hundred dollars nor more than fifteen hundred dollars or by a period of imprisonment as provided in the penal law, or by both such fine and imprisonment. A violation of subdivision six of section eleven hundred ninety-two of this article shall be punishable by a fine of not less than five hundred dollars nor more than fifteen hundred dollars or by a period of imprisonment not to exceed one hundred eighty days, or by both such fine and imprisonment. A person who operates any such vehicle in violation of such subdivision six after having been convicted of a violation of subdivision one, two, two-a, three, four, four-a or six of section eleven hundred ninety-two of this article within the preceding five years shall be punishable by a fine of not less than five hundred dollars nor more than fifteen hundred dollars or by a period of imprisonment as provided in the penal law, or by both such fine and imprisonment. A violation of subdivision two-a of section eleven hundred ninety-two of this article wherein the violator is operating a commercial motor vehicle, or any motor vehicle registered or registerable under schedule F of subdivision seven of section four hundred one of this chapter shall be a class E felony punishable by a fine of not less than one thousand dollars nor more than five thousand dollars or by a period of imprisonment as provided in the penal law, or by both such fine and imprisonment.

(3) A violation of subdivision one of section eleven hundred ninety-two of this article wherein the violator is operating a motor vehicle with a gross vehicle weight rating of more than eighteen thousand pounds which contains flammable gas, radioactive materials or explosives shall be a misdemeanor punishable by a fine of not less than five hundred dollars nor more than fifteen hundred dollars or by a period of imprisonment as provided in the penal law, or by both such fine and imprisonment.

(4) (i) A person who operates a vehicle in violation of subdivision one, two, two-a, three, four or four-a of section eleven hundred ninety-two of this article and which is punishable as provided in subparagraph one, one-a, two or three of this paragraph after having been convicted of a violation of any such subdivision of section eleven hundred ninety-two of this

article and penalized under subparagraph one, one-a, two or three of this paragraph within the preceding ten years, shall be guilty of a class E felony, which shall be punishable by a fine of not less than one thousand dollars nor more than five thousand dollars, or by a period of imprisonment as provided in the penal law, or by both such fine and imprisonment. A person who operates a vehicle in violation of subdivision six of section eleven hundred ninety-two of this article after having been convicted of two or more violations of subdivisions one, two, two-a, three, four, four-a or six of section eleven hundred ninety-two of this article within the preceding five years, any one of which was a misdemeanor, shall be guilty of a class E felony, which shall be punishable by a fine of not less than one thousand dollars nor more than five thousand dollars, or by a period of imprisonment as provided in the penal law, or by both such fine and imprisonment. In addition, any person sentenced pursuant to this subparagraph shall be subject to the disqualification provided in subparagraph three of paragraph (e) of subdivision two of this section.

(ii) A person who operates a vehicle in violation of subdivision one, two, two-a, three, four or four-a of section eleven hundred ninety-two of this article and which is punishable as provided in subparagraph one, one-a, two or three of this paragraph after having been convicted of a violation of any such subdivision of section eleven hundred ninety-two of this article and penalized under subparagraph one, one-a, two or three of this paragraph twice within the preceding ten years, shall be guilty of a class D felony, which shall be punishable by a fine of not less than two thousand dollars nor more than ten thousand dollars, or by a period of imprisonment as provided in the penal law, or by both such fine and imprisonment. A person who operates a vehicle in violation of subdivision six of section eleven hundred ninety-two of this article after having been convicted of three or more violations of subdivisions one, two, two-a, three, four, four-a or six of section eleven hundred ninety-two of this article within the preceding five years, any one of which was a misdemeanor, shall be guilty of a class D felony, which shall be punishable by a fine of not less than two thousand dollars nor more than ten thousand dollars, or by a period of imprisonment as provided in the penal law, or by both such fine and imprisonment. In addition, any person sentenced pursuant to this subparagraph shall be subject to the disqualification provided in subparagraph three of paragraph (e) of subdivision two of this section.

(4-a) A violation of subdivision two, three, four or four-a of section eleven hundred ninety-two of this article wherein the violator is operating a school bus as defined in section one hundred forty-two of this chapter and such school bus is carrying at least one student passenger shall be a class E felony punishable by a fine of not less than one thousand dollars nor more than five thousand dollars, or by a period of imprisonment as provided in the penal law, or by both such fine and imprisonment. A violation of subdivision two-a of section eleven hundred ninety-two of this article wherein the violator is operating a school bus as defined in section one hundred forty-two of this chapter and such school bus is carrying at least one student passenger shall be a class D felony punishable by a fine of not less than two thousand dollars nor more than ten thousand dollars, or by a period of imprisonment as provided in the penal law, or by both such fine and imprisonment.

(5) A violation of subdivision two, three, four or four-a of section eleven hundred ninety-two of this article wherein the violator is operating a motor vehicle with a gross vehicle weight rating of more than eighteen thousand pounds which contains flammable gas, radioactive materials or explosives, shall be a class E felony punishable by a fine of not less than one thousand dollars and such other penalties as provided for in the penal law; provided, however, that a conviction for such violation shall not be considered a predicate felony pursuant to section 70.06 of such law, or a previous felony conviction pursuant to section 70.10 of such law. A violation of subdivision two-a of section eleven hundred ninety-two of this article wherein the violator is operating a motor vehicle with a gross vehicle weight rating of more than eighteen thousand pounds which contains flammable gas, radioactive materials or explosives, shall be a class D felony punishable by a fine of not less than two thousand nor more than ten thousand dollars and such other penalties as provided for in the penal law; provided, however, that a conviction for such violation shall not be considered a predicate felony pursuant to section 70.06 of such law, or a previous felony conviction pursuant to section 70.10 of such law.

(6) The sentences required to be imposed by subparagraph one, one-a, two, three, four, four-a or five of this paragraph shall be imposed notwithstanding any contrary provision of this chapter or the penal law.

(7) Nothing contained in this paragraph shall prohibit the imposition of a charge of any other felony set forth in this or any other provision of law for any acts arising out of the same incident.

(e) Certain sentences prohibited. Notwithstanding any provisions of the penal law, no judge or magistrate shall impose a sentence of unconditional discharge for a violation of any subdivision of section eleven hundred ninety-two of this article

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nor shall a judge or magistrate impose a sentence of conditional discharge or probation unless such conditional discharge or probation is accompanied by a sentence of a fine as provided in this subdivision.

(f) Where the court imposes a sentence for a violation of section eleven hundred ninety-two of this article, the court may require the defendant, as a part of or as a condition of such sentence, to attend a single session conducted by a victims impact program. For purposes of this section, "victims impact program" means a program operated by a county, a city with a population of one million or more, by a not-for-profit organization authorized by any such county or city, or a combination thereof, in which presentations are made concerning the impact of operating a motor vehicle while under the influence of alcohol or drugs to one or more persons who have been convicted of such offenses. A description of any such program shall be filed with the commissioner and with the coordinator of the special traffic options program for driving while intoxicated established pursuant to section eleven hundred ninety-seven of this article, and shall be made available to the court upon request. Nothing contained herein shall be construed to require any governmental entity to create such a victim impact program.

1-a. Additional penalties. (a) Except as provided for in paragraph (b) of this subdivision, a person who operates a vehicle in violation of subdivision two or three of section eleven hundred ninety-two of this article after having been convicted of a violation of subdivision two or three of such section within the preceding five years shall, in addition to any other penalties which may be imposed pursuant to subdivision one of this section, be sentenced to a term of imprisonment of five days or, as an alternative to such imprisonment, be required to perform thirty days of service for a public or not-for-profit corporation, association, institution or agency as set forth in paragraph (h) of subdivision two of section 65.10 of the penal law as a condition of sentencing for such violation. Notwithstanding the provisions of this paragraph, a sentence of a term of imprisonment of five days or more pursuant to the provisions of subdivision one of this section shall be deemed to be in compliance with this subdivision.

(b) A person who operates a vehicle in violation of subdivision two or three of section eleven hundred ninety-two of this article after having been convicted on two or more occasions of a violation of any of such subdivisions within the preceding five years shall, in addition to any other penalties which may be imposed pursuant to subdivision one of this section, be sentenced to a term of imprisonment of ten days or, as an alternative to such imprisonment, be required to perform sixty days of service for a public or not-for-profit corporation, association, institution or agency as set forth in paragraph (h) of subdivision two of section 65.10 of the penal law as a condition of sentencing for such violation. Notwithstanding the provisions of this paragraph, a sentence of a term of imprisonment of ten days or more pursuant to the provisions of subdivision one of this section shall be deemed to be in compliance with this subdivision.

(c) A court sentencing a person pursuant to paragraph (a) or (b) of this subdivision shall: (i) order the installation of an ignition interlock device approved pursuant to section eleven hundred ninety-eight of this article on each motor vehicle owned by the person so sentenced. Such devices shall remain installed during any period of license revocation required to be imposed pursuant to paragraph (b) of subdivision two of this section, and, upon the termination of such revocation period, for an additional period as determined by the court; and (ii) order that such person receive an assessment of the degree of their alcohol or substance abuse and dependency pursuant to the provisions of section eleven hundred ninety-eight-a of this article. Where such assessment indicates the need for treatment, such court is authorized to impose treatment as a condition of such sentence except that such court shall impose treatment as a condition of a sentence of probation or conditional discharge pursuant to the provisions of subdivision three of section eleven hundred ninety-eight-a of this article.

(d) Confidentiality of records. The provisions of subdivision six of section eleven hundred ninety-eight-a of this article shall apply to the records and content of all assessments and treatment conducted pursuant to this subdivision.

2. License sanctions. (a) Suspensions. Except as otherwise provided in this subdivision, a license shall be suspended and a registration may be suspended for the following periods:

(1) Driving while ability impaired. Ninety days, where the holder is convicted of a violation of subdivision one of section eleven hundred ninety-two of this article;



(2) Persons under the age of twenty-one; driving after having consumed alcohol. Six months, where the holder has been found to have operated a motor vehicle after having consumed alcohol in violation of section eleven hundred ninety-two-a of this article where such person was under the age of twenty-one at the time of commission of such violation.

(b) Revocations. A license shall be revoked and a registration may be revoked for the following minimum periods:

(1) Driving while ability impaired; prior offense. Six months, where the holder is convicted of a violation of subdivision one of section eleven hundred ninety-two of this article committed within five years of a conviction for a violation of any subdivision of section eleven hundred ninety-two of this article.

(1-a) Driving while ability impaired; misdemeanor offense. Six months, where the holder is convicted of a violation of subdivision one of section eleven hundred ninety-two of this article committed within ten years of two previous convictions for a violation of any subdivision of section eleven hundred ninety-two of this article.

(2) Driving while intoxicated or while ability impaired by drugs or while ability impaired by the combined influence of drugs or of alcohol and any drug or drugs; aggravated driving while intoxicated. Six months, where the holder is convicted of a violation of subdivision two, three, four or four-a of section eleven hundred ninety-two of this article. One year where the holder is convicted of a violation of subdivision two-a of section eleven hundred ninety-two of this article.

(3) Driving while intoxicated or while ability impaired by drugs or while ability impaired by the combined influence of drugs or of alcohol and any drug or drugs; aggravated driving while intoxicated; prior offense. One year, where the holder is convicted of a violation of subdivision two, three, four or four-a of section eleven hundred ninety-two of this article committed within ten years of a conviction for a violation of subdivision two, three, four or four-a of section eleven hundred ninety-two of this article. Eighteen months, where the holder is convicted of a violation of subdivision two-a of section eleven hundred ninety-two of this article committed within ten years of a conviction for a violation of subdivision two, two-a, three, four or four-a of section eleven hundred ninety-two of this article; or where the holder is convicted of a violation of subdivision two, three, four or four-a of section eleven hundred ninety-two of this article committed within ten years of a conviction for a violation of subdivision two-a of section eleven hundred ninety-two of this article.

(4) Special vehicles other than school buses. One year, where the holder is convicted of a violation of any subdivision of section eleven hundred ninety-two of this article and is sentenced pursuant to subparagraph one of paragraph (d) of subdivision one of this section.

(4-a) School buses.

(A) One year, where the holder is convicted of a violation of any subdivision of section eleven hundred ninety-two of this article, such violation was committed while the holder was driving a school bus, and the holder is sentenced pursuant to subparagraph one, one-a or four-a of paragraph (d) of subdivision one of this section.

(B) Three years where the holder is convicted of a violation of any subdivision of section eleven hundred ninety-two of this article, such violation was committed while the holder was driving a school bus, and the holder is sentenced pursuant to subparagraph four of paragraph (d) of subdivision one of this section.

(C) Notwithstanding the provisions of the opening paragraph of this paragraph (b), the commissioner shall not revoke the registration of a school bus driven in violation of section eleven hundred ninety-two of this article.

(5) Holder of a commercial driver's license.

(i) Except as otherwise provided in this subparagraph, one year where the holder of a commercial driver's license is convicted of a violation of any subdivision of section eleven hundred ninety-two of this article or if such holder is convicted of an offense consisting of operating a motor vehicle under the influence of alcohol or drugs where such conviction was had outside of this state.

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(ii) Three years, where the holder is convicted of a violation of any subdivision of section eleven hundred ninety-two of this article, such violation was committed while the holder was operating a commercial motor vehicle transporting hazardous materials or if such holder is convicted of an offense consisting of operating a motor vehicle under the influence of alcohol or drugs where such conviction was had outside of this state.

(6) Persons under the age of twenty-one. One year, where the holder is convicted of or adjudicated a youthful offender for a violation of any subdivision of section eleven hundred ninety-two of this article, or is convicted of or receives a youthful offender or other juvenile adjudication for an offense consisting of operating a motor vehicle under the influence of intoxicating liquor where the conviction, or youthful offender or other juvenile adjudication was had outside this state, where such person was under the age of twenty-one at the time of commission of such violation.

(7) Persons under the age of twenty-one; prior offense or finding. One year or until the holder reaches the age of twenty-one, whichever is the greater period of time, where the holder has been found to have operated a motor vehicle after having consumed alcohol in violation of section eleven hundred ninety-two-a of this article, or is convicted of, or adjudicated a youthful offender for, a violation of any subdivision of section eleven hundred ninety-two of this article, or is convicted of or receives a youthful offender or juvenile adjudication for an offense consisting of operating a motor vehicle under the influence of intoxicating liquor where the conviction, or youthful offender or other juvenile adjudication was had outside this state, where such person was under the age of twenty-one at the time of commission of such violation and has previously been found to have operated a motor vehicle after having consumed alcohol in violation of section eleven hundred ninety-two-a of this article, or has previously been convicted of, or adjudicated a youthful offender for, any violation of section eleven hundred ninety-two of this article not arising out of the same incident, or has previously been convicted of or received a youthful offender or juvenile adjudication for an offense consisting of operating a motor vehicle under the influence of intoxicating liquor when the conviction, or youthful offender or other juvenile adjudication was had outside this state and not arising out of the same.

(8) Out-of-state offenses. Except as provided in subparagraph six or seven of this paragraph: (i) ninety days, where the holder is convicted of an offense consisting of operating a motor vehicle under the influence of intoxicating liquor where the conviction was had outside this state and (ii) six months, where the holder is convicted of, or receives a youthful offender or other juvenile adjudication, which would have been a misdemeanor or felony if committed by an adult, in connection with, an offense consisting of operating a motor vehicle under the influence of or while impaired by the use of drugs where the conviction or youthful offender or other juvenile adjudication was had outside this state.

NB Effective until October 1, 2007

(8) Out-of-state offenses. Except as provided in subparagraph six or seven of this paragraph, ninety days, where the holder is convicted of an offense consisting of operating a motor vehicle under the influence of intoxicating liquor or drugs where the conviction was had outside this state. NB Effective October 1, 2007

(9) Effect of rehabilitation program. No period of revocation arising out of subparagraph four, five, six or seven of this paragraph may be set aside by the commissioner for the reason that such person was a participant in the alcohol and drug rehabilitation program set forth in section eleven hundred ninety-six of this chapter.

(10) Action required by commissioner. Where a court fails to impose, or incorrectly imposes, a suspension or revocation required by this subdivision, the commissioner shall, upon receipt of a certificate of conviction filed pursuant to section five hundred fourteen of this chapter, impose such mandated suspension or revocation, which shall supersede any such order which the court may have imposed.

(11) Limitation of certain mandatory revocations. Where revocation is mandatory pursuant to subparagraph five of this paragraph for a conviction of a violation of subdivision five of section eleven hundred ninety-two of this article, such revocation shall be issued only by the commissioner and shall be applicable only to that portion of the holder's driver's license or privilege which permits the operation of commercial motor vehicles, and the commissioner shall immediately issue a license, other than a commercial driver's license, to such person provided that such person is otherwise eligible to receive such license and further provided that issuing a license to such person does not create a substantial traffic safety hazard.

(12) Permanent revocation.

(a) Notwithstanding any other provision of this chapter to the contrary, whenever a revocation is imposed upon a person for the refusal to submit to a chemical test pursuant to the provisions of section eleven hundred ninety-four of this article or conviction for any violation of section eleven hundred ninety-two of this article for which a sentence of imprisonment may be imposed, and such person has: (i) within the previous four years been twice convicted of any provisions of section eleven hundred ninety-two of this article or a violation of the penal law for which a violation of such section eleven hundred ninety-two is an essential element and at least one such conviction was for a crime, or has twice been found to have refused to submit to a chemical test pursuant to section eleven hundred ninety-four of this article, or has any combination of two such convictions and findings of refusal not arising out of the same incident; or (ii) within the previous eight years been convicted three times of any provision of section eleven hundred ninety-two of this article for which a sentence of imprisonment may be imposed or a violation of the penal law for which a violation of such section eleven hundred ninety-two is an essential element and at least two such convictions were for crimes, or has been found, on three separate occasions, to have refused to submit to a chemical test pursuant to section eleven hundred ninety-four of this article, or has any combination of such convictions and findings of refusal not arising out of the same incident, such revocation shall be permanent.

(b) The permanent driver's license revocation required by clause (a) of this subparagraph shall be waived by the commissioner after a period of five years has expired since the imposition of such permanent revocation, provided that during such five-year period such person has not been found to have refused a chemical test pursuant to section eleven hundred ninety-four of this article while operating a motor vehicle and has not been convicted of a violation of any subdivision of section eleven hundred ninety-two of this article or section five hundred eleven of this chapter or a violation of the penal law for which a violation of any subdivision of such section eleven hundred ninety-two is an essential element and either:

(i) that such person provides acceptable documentation to the commissioner that such person has voluntarily enrolled in and successfully completed an appropriate rehabilitation program; or

(ii) that such person is granted a certificate of relief from disabilities as provided for in section seven hundred one of the correction law by the court in which such person was last sentenced. Provided, however, that the commissioner may, on a case by case basis, refuse to restore a license which otherwise would be restored pursuant to this item, in the interest of the public safety and welfare.

(c) For revocations imposed pursuant to clause (a) of this subparagraph, the commissioner may adopt rules to permit conditional or restricted operation of a motor vehicle by any such person after a mandatory revocation period of not less than three years subject to such criteria, terms and conditions as established by the commissioner.

(d) Upon (i) a finding of refusal after having been convicted three times within four years of a violation of any subdivision of section eleven hundred ninety-two of this article or of the penal law for which a violation of any subdivision of such section eleven hundred ninety-two is an essential element or any combination of three such convictions not arising out of the same incident within four years or (ii) a fourth conviction of any subdivision of section eleven hundred ninety-two of this article after having been convicted of any such subdivision of such section eleven hundred ninety-two or of the penal law for which a violation of any of such subdivisions of such section eleven hundred ninety-two is an essential element or any combination of three such convictions not arising out of the same incident within four years or (iii) a finding of refusal after having been convicted four times within eight years of a violation of any subdivision of section eleven hundred ninety-two of this article or of the penal law for which a violation of any of such subdivisions of such section eleven hundred ninety-two is an essential element or any combination of four such convictions not arising out of the same incident within eight years or (iv) a fifth conviction of any subdivision of section eleven hundred ninety-two of this article after having been convicted of such subdivision or of the penal law for which a violation of any of such subdivisions of such section eleven hundred ninety-two is an essential element or any combination of four such convictions not arising out of the same incident within eight years, such revocation shall be permanent.

(e) The permanent driver's license revocation required by clause (d) of this subparagraph may be waived by the commissioner after a period of eight years has expired since the imposition of such permanent revocation provided:

(i) that during such eight-year period such person has not been found to have refused a chemical test pursuant to section eleven hundred ninety-four of this article while operating a motor vehicle and has not been convicted of a violation of any subdivision of section eleven hundred ninety-two of this article or section five hundred eleven of this chapter or a violation of the penal law for which a violation of any such subdivisions of such section eleven hundred ninety-two is an essential element; and

(ii) that such person provides acceptable documentation to the commissioner that such person has voluntarily enrolled in and successfully completed an appropriate rehabilitation program; and (iii) after such documentation is accepted, that such person is granted a certificate of relief from disabilities as provided for in section seven hundred one of the correction law by the court in which such person was last sentenced.

Notwithstanding the provisions of this clause, nothing contained in this clause shall be deemed to require the commissioner to restore a license to an applicant who otherwise has complied with the requirements of this item, in the interest of the public safety and welfare.

(f) Nothing contained in this subparagraph shall be deemed to reduce a license revocation period imposed pursuant to any other provision of law.

(c) Reissuance of licenses; restrictions.

(1) Except as otherwise provided in this paragraph, where a license is revoked pursuant to paragraph (b) of this subdivision, no new license shall be issued after the expiration of the minimum period specified in such paragraph, except in the discretion of the commissioner.

(2) Where a license is revoked pursuant to subparagraph two, three or eight of paragraph (b) of this subdivision for a violation of subdivision four of section eleven hundred ninety-two of this article, and where the individual does not have a driver's license or the individual's license was suspended at the time of conviction or youthful offender or other juvenile adjudication, the commissioner shall not issue a new license nor restore the former license for a period of six months after such individual would otherwise have become eligible to obtain a new license or to have the former license restored; provided, however, that during such delay period the commissioner may issue a restricted use license pursuant to section five hundred thirty of this chapter.

(3) In no event shall a new license be issued where a person has been twice convicted of a violation of subdivision three, four or four-a of section eleven hundred ninety-two of this article or of driving while intoxicated or of driving while ability is impaired by the use of a drug or of driving while ability is impaired by the combined influence of drugs or of alcohol and any drug or drugs where physical injury, as defined in section 10.00 of the penal law, has resulted from such offense in each instance.

NB Effective until October 1, 2007

(c) Reissuance of licenses; restrictions. Where a license is revoked pursuant to paragraph (b) of this subdivision, no new license shall be issued after the expiration of the minimum period specified in such paragraph, except in the discretion of the commissioner; provided, however, that in no event shall a new license be issued where a person has been twice convicted of a violation of subdivision three, four or four-a of section eleven hundred ninety-two of this article or of driving while intoxicated or of driving while ability is impaired by the use of a drug or of driving while ability is impaired by the combined influence of drugs or of alcohol and any drug or drugs where physical injury, as defined in section 10.00 of the penal law, has resulted from such offense in each instance.

NB Effective October 1, 2007

(d) Suspension or revocation; sentencing.

(1) Notwithstanding anything to the contrary contained in a certificate of relief from disabilities issued pursuant to article twenty-three of the correction law, where a suspension or revocation, other than a revocation required to be issued by the

commissioner, is mandatory pursuant to paragraph (a) or (b) of this subdivision, the magistrate, justice or judge shall issue an order suspending or revoking such license upon sentencing, and the license holder shall surrender such license to the court. Except as hereinafter provided, such suspension or revocation shall take effect immediately.

(2) Except where the license holder has been charged with a violation of article one hundred twenty or one hundred twenty-five of the penal law arising out of the same incident or convicted of such violation or a violation of any subdivision of section eleven hundred ninety-two of this article within the preceding five years, the judge, justice or magistrate may issue an order making said license suspension or revocation take effect twenty days after the date of sentencing. The license holder shall be given a copy of said order permitting the continuation of driving privileges for twenty days after sentencing, if granted by the court. The court shall forward to the commissioner the certificates required in sections five hundred thirteen and five hundred fourteen of this chapter, along with a copy of any order issued pursuant to this paragraph and the license, within ninety-six hours of sentencing.

(e) Special provisions. (1) Suspension pending prosecution; procedure. a. Without notice, pending any prosecution, the court shall suspend such license, where the holder has been charged with a violation of subdivision two, two-a, three, four or four-a of section eleven hundred ninety-two of this article and either (i) a violation of a felony under article one hundred twenty or one hundred twenty-five of the penal law arising out of the same incident, or (ii) has been convicted of any violation under section eleven hundred ninety-two of this article within the preceding five years.

b. The suspension under the preceding clause shall occur no later than twenty days after the holder's first appearance before the court on the charges or at the conclusion of all proceedings required for the arraignment. In order for the court to impose such suspension it must find that the accusatory instrument conforms to the requirements of section 100.40 of the criminal procedure law and there exists reasonable cause to believe that the holder operated a motor vehicle in violation of subdivision two, two-a, three, four or four-a of section eleven hundred ninety-two of this article and either (i) the person had been convicted of any violation under such section eleven hundred ninety-two of this article within the preceding five years; or (ii) that the holder committed a violation of a felony under article one hundred twenty or one hundred twenty-five of the penal law. At such time the holder shall be entitled to an opportunity to make a statement regarding the enumerated issues and to present evidence tending to rebut the court's findings. Where such suspension is imposed upon a pending charge of a violation of a felony under article one hundred twenty or one hundred twenty-five of the penal law and the holder has requested a hearing pursuant to article one hundred eighty of the criminal procedure law, the court shall conduct such hearing. If upon completion of the hearing, the court fails to find that there is reasonable cause to believe that the holder committed a felony under article one hundred twenty or one hundred twenty-five of the penal law and the holder has not been previously convicted of any violation of section eleven hundred ninety-two of this article within the preceding five years the court shall promptly notify the commissioner and direct restoration of such license to the license holder unless such license is suspended or revoked pursuant to any other provision of this chapter.

(2) Bail forfeiture. A license shall be suspended where the holder forfeits bail upon a charge of a violation of any subdivision of section eleven hundred ninety-two of this article. Such suspension shall not be terminated until the holder submits to the jurisdiction of the court in which the bail was forfeited.

(3) Permanent disqualification from operating certain motor vehicles. a. Except as otherwise provided herein, in addition to any revocation set forth in subparagraph four or five of paragraph (b) of this subdivision, any person sentenced pursuant to subparagraph three of paragraph (d) of subdivision one of this section shall be permanently disqualified from operating any vehicle set forth in such paragraph. In addition, the commissioner shall not issue such person a license valid for the operation of any vehicle set forth therein by such person. The commissioner may waive such disqualification and prohibition hereinbefore provided after a period of five years has expired from such sentencing provided:

(i) that during such five year period such person has not violated any of the provisions of section eleven hundred ninety-two of this article or any alcohol or drug related traffic offense in this state or in any jurisdiction outside this state;

(ii) that such person provides acceptable documentation to the commissioner that such person is not in need of alcohol or drug treatment or has satisfactorily completed a prescribed course of such treatment; and

(iii) after such documentation is accepted, that such person is granted a certificate of relief from disabilities as provided for in section seven hundred one of the correction law by the court in which such person was last penalized pursuant to paragraph (d) of subdivision one of this section. b. Any person who holds a commercial driver's license and is convicted of a violation of any subdivision of section eleven hundred ninety-two of this article who has had a prior finding of refusal to submit to a chemical test pursuant to section eleven hundred ninety-four of this article or has had a prior conviction of any of the following offenses: any violation of section eleven hundred ninety-two of this article; any violation of subdivision one or two of section six hundred of this chapter; or has a prior conviction of any felony involving the use of a motor vehicle pursuant to paragraph (a) of subdivision one of section five hundred ten-a of this chapter, shall be permanently disqualified from operating a commercial motor vehicle. The commissioner may waive such disqualification and prohibition hereinbefore provided after a period of ten years has expired from such sentence provided:

(i) that during such ten year period such person has not been found to have refused a chemical test pursuant to section eleven hundred ninety-four of this article while operating a motor vehicle and has not been convicted of any one of the following offenses while operating a motor vehicle: any violation of section eleven hundred ninety-two of this article; any violation of subdivision one or two of section six hundred of this chapter; or has a prior conviction of any felony involving the use of a motor vehicle pursuant to paragraph (a) of subdivision one of section five hundred ten-a of this chapter;

(ii) that such person provides acceptable documentation to the commissioner that such person is not in need of alcohol or drug treatment or has satisfactorily completed a prescribed course of such treatment; and

(iii) after such documentation is accepted, that such person is granted a certificate of relief from disabilities as provided for in section seven hundred one of the correction law by the court in which such person was last penalized pursuant to paragraph (d) of subdivision one of this section. c. Upon a third finding of refusal and/or conviction of any of the offenses which require a permanent commercial driver's license revocation, such permanent revocation may not be waived by the commissioner under any circumstances.

(4) Youthful offenders. Where a youth is determined to be a youthful offender, following a conviction of a violation of section eleven hundred ninety-two of this article for which a license suspension or revocation is mandatory, the court shall impose such suspension or revocation as is otherwise required upon conviction and, further, shall notify the commissioner of said suspension or revocation and its finding that said violator is granted youthful offender status as is required pursuant to section five hundred thirteen of this chapter.

(5) Probation. When a license to operate a motor vehicle has been revoked pursuant to this chapter, and the holder has been sentenced to a period of probation pursuant to section 65.00 of the penal law for a violation of any provision of this chapter, or any other provision of the laws of this state, and a condition of such probation is that the holder thereof not operate a motor vehicle or not apply for a license to operate a motor vehicle during the period of such condition of probation, the commissioner may not restore such license until the period of the condition of probation has expired. (6) Application for new license. Where a license has been revoked pursuant to paragraph (b) of this subdivision, or where the holder is subject to a condition of probation as provided in subparagraph five of this paragraph, application for a new license may be made within forty-five days prior to the expiration of such minimum period of revocation or condition of probation, whichever expires last.

[RMP cite as VTL §1193(2)(e)(7)]

(7) Suspension pending prosecution; excessive blood alcohol content. a. Except as provided in clause a-1 of this subparagraph, a court shall suspend a driver's license, pending prosecution, of any person charged with a violation of subdivision two, two-a, three or four-a of section eleven hundred ninety-two of this article who, at the time of arrest, is alleged to have had .08 of one percent or more by weight of alcohol in such driver's blood as shown by chemical analysis of blood, breath, urine or saliva, made pursuant to subdivision two or three of section eleven hundred ninety-four of this article.

a-1. A court shall suspend a class DJ or MJ learner's permit or a class DJ or MJ driver's license, pending prosecution, of any person who has been charged with a violation of subdivision one, two, two-a and/or three of section eleven hundred ninety-two of this article.

[RMP cite as VTL §1193(2)(e)(7)(b)]

b. The suspension occurring under clause a of this subparagraph shall occur no later than at the conclusion of all proceedings required for the arraignment and the suspension occurring under clause a-1 of this subparagraph shall occur immediately after the holder's first appearance before the court on the charge which shall, whenever possible, be the next regularly scheduled session of the court after the arrest or at the conclusion of all proceedings required for the arraignment; provided, however, that if the results of any test administered pursuant to section eleven hundred ninety-four of this article are not available within such time period, the complainant police officer or other public servant shall transmit such results to the court at the time they become available, and the court shall, as soon as practicable following the receipt of such results and in compliance with the requirements of this subparagraph, suspend such license. In order for the court to impose such suspension it must find that the accusatory instrument conforms to the requirements of section 100.40 of the criminal procedure law and there exists reasonable cause to believe either that

(a) the holder operated a motor vehicle while such holder had .08 of one percent or more by weight of alcohol in his or her blood as was shown by chemical analysis of such person's blood, breath, urine or saliva, made pursuant to the provisions of section eleven hundred ninety-four of this article or

(b) the person was the holder of a class DJ or MJ learner's permit or a class DJ or MJ driver's license and operated a motor vehicle while such holder was in violation of subdivision one, two and/or three of section eleven hundred ninety-two of this article. At the time of such license suspension the holder shall be entitled to an opportunity to make a statement regarding these two issues and to present evidence tending to rebut the court's findings.

c. Nothing contained in this subparagraph shall be construed to prohibit or limit a court from imposing any other suspension pending prosecution required or permitted by law.

d. Notwithstanding any contrary provision of this chapter, if any suspension occurring under this subparagraph has been in effect for a period of thirty days, the holder may be issued a conditional license, in accordance with section eleven hundred ninety-six of this article, provided the holder of such license is otherwise eligible to receive such conditional license. The commissioner shall prescribe by regulation the procedures for the issuance of such conditional license.

[RMP cite as VTL §1193(2)(e)(7)(e)]

e. If the court finds that the suspension imposed pursuant to this subparagraph will result in extreme hardship, the court must issue such suspension, but may grant a hardship privilege, which shall be issued on a form prescribed by the commissioner. For the purposes of this clause, "extreme hardship" shall mean the inability to obtain alternative means of travel to or from the licensee's employment, or to or from necessary medical treatment for the licensee or a member of the licensee's household, or if the licensee is a matriculating student enrolled in an accredited school, college or university travel to or from such licensee's school, college or university if such travel is necessary for the completion of the educational degree or certificate. The burden of proving extreme hardship shall be on the licensee who may present material and relevant evidence. A finding of extreme hardship may not be based solely upon the testimony of the licensee. In no event shall arraignment be adjourned or otherwise delayed more than three business days solely for the purpose of allowing the licensee to present evidence of extreme hardship. The court shall set forth upon the record, or otherwise set forth in writing, the factual basis for such finding. The hardship privilege shall permit the operation of a vehicle only for travel to or from the licensee's employment, or to or from necessary medical treatment for the licensee or a member of the licensee's household, or if the licensee is a matriculating student enrolled in an accredited school, college or university travel to or from such licensee's school, college or university if such travel is necessary for the completion of the educational degree or certificate.

NB Repealed October 1, 2007

(f) Notice of charges to parent or guardian. Notwithstanding the provisions of subdivision two of section eighteen hundred seven of this chapter, upon the first scheduled appearance of any person under eighteen years of age who resides within the household of his or her parent or guardian upon a charge of a violation of subdivision one, two and/or three of section eleven hundred ninety-two of this article, the local criminal court before which such first appearance is scheduled shall forthwith transmit written notice of such appearance or failure to make such appearance to the parent or guardian of such

minor person; provided, however, that if an arraignment and conviction of such person follows such appearance upon the same day, or in case such person waives arraignment and enters a plea of guilty to the offense as charged in accordance with the provisions of section eighteen hundred five of this chapter, transmittal of notice of his or her conviction as provided in section five hundred fourteen of this chapter shall be sufficient and the notice required by this paragraph need not be given; provided further that the failure of a local criminal court to transmit the notice required by this paragraph shall in no manner affect the validity of a conviction subsequently obtained.

(Emphasis added above wherever bold and/or underlined.)

[\*out-of-state operator; hardship privilege, see VTL §1193(2)(e)(7)(e) “suspension imposed pursuant to this subparagraph”.]

#### §1194. Arrest and testing.

##### 1. Arrest and field testing.

(a) Arrest. Notwithstanding the provisions of section 140.10 of the criminal procedure law, a police officer may, without a warrant, arrest a person, in case of a violation of subdivision one of section eleven hundred ninety-two of this article, if such violation is coupled with an accident or collision in which such person is involved, which in fact has been committed, though not in the police officer’s presence, when the officer has reasonable cause to believe that the violation was committed by such person.

(b) Field testing. Every person operating a motor vehicle which has been involved in an accident or which is operated in violation of any of the provisions of this chapter shall, at the request of a police officer, submit to a breath test to be administered by the police officer. If such test indicates that such operator has consumed alcohol, the police officer may request such operator to submit to a chemical test in the manner set forth in subdivision two of this section.

##### 2. Chemical tests.

(a) When authorized. Any person who operates a motor vehicle in this state shall be deemed to have given consent to a chemical test of one or more of the following: breath, blood, urine, or saliva, for the purpose of determining the alcoholic and/or drug content of the blood provided that such test is administered by or at the direction of a police officer with respect to a chemical test of breath, urine or saliva or, with respect to a chemical test of blood, at the direction of a police officer:

(1) having reasonable grounds to believe such person to have been operating in violation of any subdivision of section eleven hundred ninety-two of this article and within two hours after such person has been placed under arrest for any such violation; or having reasonable grounds to believe such person to have been operating in violation of section eleven hundred ninety-two-a of this article and within two hours after the stop of such person for any such violation,

(2) within two hours after a breath test, as provided in paragraph (b) of subdivision one of this section, indicates that alcohol has been consumed by such person and in accordance with the rules and regulations established by the police force of which the officer is a member;

(3) for the purposes of this paragraph, “reasonable grounds” to believe that a person has been operating a motor vehicle after having consumed alcohol in violation of section eleven hundred ninety-two-a of this article shall be determined by viewing the totality of circumstances surrounding the incident which, when taken together, indicate that the operator was driving in violation of such subdivision. Such circumstances may include any visible or behavioral indication of alcohol consumption by the operator, the existence of an open container containing or having contained an alcoholic beverage in or around the vehicle driven by the operator, or any other evidence surrounding the circumstances of the incident which indicates that the operator has been operating a motor vehicle after having consumed alcohol at the time of the incident; or (4) notwithstanding any other provision of law to the contrary, no person under the age of twenty-one shall be arrested for an alleged violation of section eleven hundred ninety-two-a of this article. However, a person under the age of twenty-one for whom a chemical test is authorized pursuant to this paragraph may be temporarily detained by the police solely for the purpose of requesting or administering such chemical test whenever arrest without a warrant for a petty offense would be authorized



in accordance with the provisions of section 140.10 of the criminal procedure law or paragraph (a) of subdivision one of this section.

(b) Report of refusal.

(1) If: (A) such person having been placed under arrest; or (B) after a breath test indicates the presence of alcohol in the person's system; or (C) with regard to a person under the age of twenty-one, there are reasonable grounds to believe that such person has been operating a motor vehicle after having consumed alcohol in violation of section eleven hundred ninety-two-a of this article; and having thereafter been requested to submit to such chemical test and having been informed that the person's license or permit to drive and any non-resident operating privilege shall be immediately suspended and subsequently revoked, or, for operators under the age of twenty-one for whom there are reasonable grounds to believe that such operator has been operating a motor vehicle after having consumed alcohol in violation of section eleven hundred ninety-two-a of this article, shall be revoked for refusal to submit to such chemical test or any portion thereof, whether or not the person is found guilty of the charge for which such person is arrested or detained, refuses to submit to such chemical test or any portion thereof, unless a court order has been granted pursuant to subdivision three of this section, the test shall not be given and a written report of such refusal shall be immediately made by the police officer before whom such refusal was made. Such report may be verified by having the report sworn to, or by affixing to such report a form notice that false statements made therein are punishable as a class A misdemeanor pursuant to section 210.45 of the penal law and such form notice together with the subscription of the deponent shall constitute a verification of the report.

(2) The report of the police officer shall set forth reasonable grounds to believe such arrested person or such detained person under the age of twenty-one had been driving in violation of any subdivision of section eleven hundred ninety-two or eleven hundred ninety-two-a of this article, that said person had refused to submit to such chemical test, and that no chemical test was administered pursuant to the requirements of subdivision three of this section. The report shall be presented to the court upon arraignment of an arrested person, provided, however, in the case of a person under the age of twenty-one, for whom a test was authorized pursuant to the provisions of subparagraph two or three of paragraph (a) of this subdivision, and who has not been placed under arrest for a violation of any of the provisions of section eleven hundred ninety-two of this article, such report shall be forwarded to the commissioner within forty-eight hours in a manner to be prescribed by the commissioner, and all subsequent proceedings with regard to refusal to submit to such chemical test by such person shall be as set forth in subdivision three of section eleven hundred ninety-four-a of this article.

(3) For persons placed under arrest for a violation of any subdivision of section eleven hundred ninety-two of this article, the license or permit to drive and any non-resident operating privilege shall, upon the basis of such written report, be temporarily suspended by the court without notice pending the determination of a hearing as provided in paragraph (c) of this subdivision. Copies of such report must be transmitted by the court to the commissioner and such transmittal may not be waived even with the consent of all the parties. Such report shall be forwarded to the commissioner within forty-eight hours of such arraignment.

(4) The court or the police officer, in the case of a person under the age of twenty-one alleged to be driving after having consumed alcohol, shall provide such person with a scheduled hearing date, a waiver form, and such other information as may be required by the commissioner. If a hearing, as provided for in paragraph (c) of this subdivision, or subdivision three of section eleven hundred ninety-four-a of this article, is waived by such person, the commissioner shall immediately revoke the license, permit, or non-resident operating privilege, as of the date of receipt of such waiver in accordance with the provisions of paragraph (d) of this subdivision.

(c) Hearings. Any person whose license or permit to drive or any non-resident driving privilege has been suspended pursuant to paragraph (b) of this subdivision is entitled to a hearing in accordance with a hearing schedule to be promulgated by the commissioner. If the department fails to provide for such hearing fifteen days after the date of the arraignment of the arrested person, the license, permit to drive or non-resident operating privilege of such person shall be reinstated pending a hearing pursuant to this section.

The hearing shall be limited to the following issues:

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- (1) did the police officer have reasonable grounds to believe that such person had been driving in violation of any subdivision of section eleven hundred ninety-two of this article;
  - (2) did the police officer make a lawful arrest of such person;
  - (3) was such person given sufficient warning, in clear or unequivocal language, prior to such refusal that such refusal to submit to such chemical test or any portion thereof, would result in the immediate suspension and subsequent revocation of such person's license or operating privilege whether or not such person is found guilty of the charge for which the arrest was made; and
  - (4) did such person refuse to submit to such chemical test or any portion thereof.

If, after such hearing, the hearing officer, acting on behalf of the commissioner, finds on any one of said issues in the negative, the hearing officer shall immediately terminate any suspension arising from such refusal.

If, after such hearing, the hearing officer, acting on behalf of the commissioner finds all of the issues in the affirmative, such officer shall immediately revoke the license or permit to drive or any non-resident operating privilege in accordance with the provisions of paragraph (d) of this subdivision. A person who has had a license or permit to drive or non-resident operating privilege suspended or revoked pursuant to this subdivision may appeal the findings of the hearing officer in accordance with the provisions of article three-A of this chapter. Any person may waive the right to a hearing under this section. Failure by such person to appear for the scheduled hearing shall constitute a waiver of such hearing, provided, however, that such person may petition the commissioner for a new hearing which shall be held as soon as practicable. (d)

Sanctions.

(1) Revocations.

a. Any license which has been revoked pursuant to paragraph (c) of this subdivision shall not be restored for at least one year after such revocation, nor thereafter, except in the discretion of the commissioner. However, no such license shall be restored for at least eighteen months after such revocation, nor thereafter except in the discretion of the commissioner, in any case where the person has had a prior revocation resulting from refusal to submit to a chemical test, or has been convicted of or found to be in violation of any subdivision of section eleven hundred ninety-two or section eleven hundred ninety-two-a of this article not arising out of the same incident, within the five years immediately preceding the date of such revocation; provided, however, a prior finding that a person under the age of twenty-one has refused to submit to a chemical test pursuant to subdivision three of section eleven hundred ninety-four-a of this article shall have the same effect as a prior finding of a refusal pursuant to this subdivision solely for the purpose of determining the length of any license suspension or revocation required to be imposed under any provision of this article, provided that the subsequent offense or refusal is committed or occurred prior to the expiration of the retention period for such prior refusal as set forth in paragraph (k) of subdivision one of section two hundred one of this chapter.

b. Any license which has been revoked pursuant to paragraph (c) of this subdivision or pursuant to subdivision three of section eleven hundred ninety-four-a of this article, where the holder was under the age of twenty-one years at the time of such refusal, shall not be restored for at least one year, nor thereafter, except in the discretion of the commissioner. Where such person under the age of twenty-one years has a prior finding, conviction or youthful offender adjudication resulting from a violation of section eleven hundred ninety-two or section eleven hundred ninety-two-a of this article, not arising from the same incident, such license shall not be restored for at least one year or until such person reaches the age of twenty-one years, whichever is the greater period of time, nor thereafter, except in the discretion of the commissioner.

c. Any commercial driver's license which has been revoked pursuant to paragraph (c) of this subdivision based upon a finding of refusal to submit to a chemical test, where such finding occurs within or outside of this state, shall not be restored for at least eighteen months after such revocation, nor thereafter, except in the discretion of the commissioner, but shall not be restored for at least three years after such revocation, nor thereafter, except in the discretion of the commissioner, if the holder of such license was operating a commercial motor vehicle transporting hazardous materials at the time of such refusal. However, such person shall be permanently disqualified from operating a commercial motor vehicle in any case

where the holder has a prior finding of refusal to submit to a chemical test pursuant to this section or has a prior conviction of any of the following offenses: any violation of section eleven hundred ninety-two of this article; any violation of subdivision one or two of section six hundred of this chapter; or has a prior conviction of any felony involving the use of a motor vehicle pursuant to paragraph (a) of subdivision one of section five hundred ten-a of this chapter. Provided that the commissioner may waive such permanent revocation after a period of ten years has expired from such revocation provided:

(i) that during such ten year period such person has not been found to have refused a chemical test pursuant to this section and has not been convicted of any one of the following offenses: any violation of section eleven hundred ninety-two of this article; refusal to submit to a chemical test pursuant to this section; any violation of subdivision one or two of section six hundred of this chapter; or has a prior conviction of any felony involving the use of a motor vehicle pursuant to paragraph (a) of subdivision one of section five hundred ten-a of this chapter;

(ii) that such person provides acceptable documentation to the commissioner that such person is not in need of alcohol or drug treatment or has satisfactorily completed a prescribed course of such treatment; and

(iii) after such documentation is accepted, that such person is granted a certificate of relief from disabilities as provided for in section seven hundred one of the correction law by the court in which such person was last penalized. d. Upon a third finding of refusal and/or conviction of any of the offenses which require a permanent commercial driver's license revocation, such permanent revocation may not be waived by the commissioner under any circumstances.

(2) Civil penalties. Except as otherwise provided, any person whose license, permit to drive, or any non-resident operating privilege is revoked pursuant to the provisions of this section shall also be liable for a civil penalty in the amount of five hundred dollars except that if such revocation is a second or subsequent revocation pursuant to this section issued within a five year period, or such person has been convicted of a violation of any subdivision of section eleven hundred ninety-two of this article within the past five years not arising out of the same incident, the civil penalty shall be in the amount of seven hundred fifty dollars. Any person whose license is revoked pursuant to the provisions of this section based upon a finding of refusal to submit to a chemical test while operating a commercial motor vehicle shall also be liable for a civil penalty of five hundred fifty dollars except that if such person has previously been found to have refused a chemical test pursuant to this section while operating a commercial motor vehicle or has a prior conviction of any of the following offenses while operating a commercial motor vehicle: any violation of section eleven hundred ninety-two of this article; any violation of subdivision two of section six hundred of this chapter; or has a prior conviction of any felony involving the use of a commercial motor vehicle pursuant to paragraph (a) of subdivision one of section five hundred ten-a of this chapter, then the civil penalty shall be seven hundred fifty dollars. No new driver's license or permit shall be issued, or non-resident operating privilege restored to such person unless such penalty has been paid. All penalties collected by the department pursuant to the provisions of this section shall be the property of the state and shall be paid into the general fund of the state treasury.

(3) Effect of rehabilitation program. No period of revocation arising out of this section may be set aside by the commissioner for the reason that such person was a participant in the alcohol and drug rehabilitation program set forth in section eleven hundred ninety-six of this article.

(e) Regulations. The commissioner shall promulgate such rules and regulations as may be necessary to effectuate the provisions of subdivisions one and two of this section.

(f) Evidence. Evidence of a refusal to submit to such chemical test or any portion thereof shall be admissible in any trial, proceeding or hearing based upon a violation of the provisions of section eleven hundred ninety-two of this article but only upon a showing that the person was given sufficient warning, in clear and unequivocal language, of the effect of such refusal and that the person persisted in the refusal.

(g) Results. Upon the request of the person who was tested, the results of such test shall be made available to such person.

### 3. Compulsory chemical tests.

(a) Court ordered chemical tests. Notwithstanding the provisions of subdivision two of this section, no person who operates a motor vehicle in this state may refuse to submit to a chemical test of one or more of the following: breath, blood, urine or

saliva, for the purpose of determining the alcoholic and/or drug content of the blood when a court order for such chemical test has been issued in accordance with the provisions of this subdivision.

(b) When authorized. Upon refusal by any person to submit to a chemical test or any portion thereof as described above, the test shall not be given unless a police officer or a district attorney, as defined in subdivision thirty-two of section 1.20 of the criminal procedure law, requests and obtains a court order to compel a person to submit to a chemical test to determine the alcoholic or drug content of the person's blood upon a finding of reasonable cause to believe that:

(1) such person was the operator of a motor vehicle and in the course of such operation a person other than the operator was killed or suffered serious physical injury as defined in section 10.00 of the penal law; and

(2) a. either such person operated the vehicle in violation of any subdivision of section eleven hundred ninety-two of this article, or b. a breath test administered by a police officer in accordance with paragraph (b) of subdivision one of this section indicates that alcohol has been consumed by such person; and

(3) such person has been placed under lawful arrest; and

(4) such person has refused to submit to a chemical test or any portion thereof, requested in accordance with the provisions of paragraph (a) of subdivision two of this section or is unable to give consent to such a test.

(c) Reasonable cause; definition. For the purpose of this subdivision "reasonable cause" shall be determined by viewing the totality of circumstances surrounding the incident which, when taken together, indicate that the operator was driving in violation of section eleven hundred ninety-two of this article. Such circumstances may include, but are not limited to: evidence that the operator was operating a motor vehicle in violation of any provision of this article or any other moving violation at the time of the incident; any visible indication of alcohol or drug consumption or impairment by the operator; the existence of an open container containing an alcoholic beverage in or around the vehicle driven by the operator; any other evidence surrounding the circumstances of the incident which indicates that the operator has been operating a motor vehicle while impaired by the consumption of alcohol or drugs or intoxicated at the time of the incident.

(d) Court order; procedure.

(1) An application for a court order to compel submission to a chemical test or any portion thereof, may be made to any supreme court justice, county court judge or district court judge in the judicial district in which the incident occurred, or if the incident occurred in the city of New York before any supreme court justice or judge of the criminal court of the city of New York. Such application may be communicated by telephone, radio or other means of electronic communication, or in person.

(2) The applicant must provide identification by name and title and must state the purpose of the communication. Upon being advised that an application for a court order to compel submission to a chemical test is being made, the court shall place under oath the applicant and any other person providing information in support of the application as provided in subparagraph three of this paragraph. After being sworn the applicant must state that the person from whom the chemical test was requested was the operator of a motor vehicle and in the course of such operation a person, other than the operator, has been killed or seriously injured and, based upon the totality of circumstances, there is reasonable cause to believe that such person was operating a motor vehicle in violation of any subdivision of section eleven hundred ninety-two of this article and, after being placed under lawful arrest such person refused to submit to a chemical test or any portion thereof, in accordance with the provisions of this section or is unable to give consent to such a test or any portion thereof. The applicant must make specific allegations of fact to support such statement. Any other person properly identified, may present sworn allegations of fact in support of the applicant's statement.

(3) Upon being advised that an oral application for a court order to compel a person to submit to a chemical test is being made, a judge or justice shall place under oath the applicant and any other person providing information in support of the application. Such oath or oaths and all of the remaining communication must be recorded, either by means of a voice recording device or verbatim stenographic or verbatim longhand notes. If a voice recording device is used or a stenographic record made, the judge must have the record transcribed, certify to the accuracy of the transcription and file the original

record and transcription with the court within seventy-two hours of the issuance of the court order. If the longhand notes are taken, the judge shall subscribe a copy and file it with the court within twenty-four hours of the issuance of the order.

(4) If the court is satisfied that the requirements for the issuance of a court order pursuant to the provisions of paragraph (b) of this subdivision have been met, it may grant the application and issue an order requiring the accused to submit to a chemical test to determine the alcoholic and/or drug content of his blood and ordering the withdrawal of a blood sample in accordance with the provisions of paragraph (a) of subdivision four of this section. When a judge or justice determines to issue an order to compel submission to a chemical test based on an oral application, the applicant therefor shall prepare the order in accordance with the instructions of the judge or justice. In all cases the order shall include the name of the issuing judge or justice, the name of the applicant, and the date and time it was issued. It must be signed by the judge or justice if issued in person, or by the applicant if issued orally.

(5) Any false statement by an applicant or any other person in support of an application for a court order shall subject such person to the offenses for perjury set forth in article two hundred ten of the penal law.

(6) The chief administrator of the courts shall establish a schedule to provide that a sufficient number of judges or justices will be available in each judicial district to hear oral applications for court orders as permitted by this section.

(e) Administration of compulsory chemical test. An order issued pursuant to the provisions of this subdivision shall require that a chemical test to determine the alcoholic and/or drug content of the operator's blood must be administered. The provisions of paragraphs (a), (b) and (c) of subdivision four of this section shall be applicable to any chemical test administered pursuant to this section.

4. Testing procedures. (a) Persons authorized to withdraw blood; immunity; testimony.

(1) At the request of a police officer, the following persons may withdraw blood for the purpose of determining the alcoholic or drug content therein: (i) a physician, a registered professional nurse or a registered physician's assistant; or (ii) under the supervision and at the direction of a physician: a medical laboratory technician or medical technologist as classified by civil service; a phlebotomist; an advanced emergency medical technician as certified by the department of health; or a medical laboratory technician or medical technologist employed by a clinical laboratory approved under title five of article five of the public health law. This limitation shall not apply to the taking of a urine, saliva or breath specimen.

(2) No person entitled to withdraw blood pursuant to subparagraph one of this paragraph or hospital employing such person, and no other employer of such person shall be sued or held liable for any act done or omitted in the course of withdrawing blood at the request of a police officer pursuant to this section.

(3) Any person who may have a cause of action arising from the withdrawal of blood as aforesaid, for which no personal liability exists under subparagraph two of this paragraph, may maintain such action against the state if any person entitled to withdraw blood pursuant to paragraph (a) hereof acted at the request of a police officer employed by the state, or against the appropriate political subdivision of the state if such person acted at the request of a police officer employed by a political subdivision of the state. No action shall be maintained pursuant to this subparagraph unless notice of claim is duly filed or served in compliance with law.

(4) Notwithstanding the foregoing provisions of this paragraph an action may be maintained by the state or a political subdivision thereof against a person entitled to withdraw blood pursuant to subparagraph one of this paragraph or hospital employing such person for whose act or omission the state or the political subdivision has been held liable under this paragraph to recover damages, not exceeding the amount awarded to the claimant, that may have been sustained by the state or the political subdivision by reason of gross negligence or bad faith on the part of such person.

(5) The testimony of any person other than a physician, entitled to withdraw blood pursuant to subparagraph one of this paragraph, in respect to any such withdrawal of blood made by such person may be received in evidence with the same weight, force and effect as if such withdrawal of blood were made by a physician.

(6) The provisions of subparagraphs two, three and four of this paragraph shall also apply with regard to any person employed by a hospital as security personnel for any act done or omitted in the course of withdrawing blood at the request of a police officer pursuant to a court order in accordance with subdivision three of this section. (b) Right to additional test. The person tested shall be permitted to choose a physician to administer a chemical test in addition to the one administered at the direction of the police officer. (c) Rules and regulations. The department of health shall issue and file rules and regulations approving satisfactory techniques or methods of conducting chemical analyses of a person's blood, urine, breath or saliva and to ascertain the qualifications and competence of people to conduct and supervise chemical analyses of a person's blood, urine, breath or saliva. If the analyses were made by an individual possessing a permit issued by the department of health, this shall be presumptive evidence that the examination was properly given. The provisions of this paragraph do not prohibit the introduction as evidence of an analysis made by an individual other than a person possessing a permit issued by the department of health.

(Emphasis added above wherever bold and/or underlined.)

#### §1199. Driver responsibility assessment.

1. In addition to any fines, fees, penalties and surcharges authorized by law, any person convicted of a violation of any subdivision of section eleven hundred ninety-two of this article, or any person found to have refused a chemical test in accordance with section eleven hundred ninety-four of this article not arising out of the same incident as a conviction for a violation of any of the provisions of section eleven hundred ninety-two of this article, shall become liable to the department for payment of a driver responsibility assessment as provided in this section.
2. The amount of the driver responsibility assessment under this section shall be two hundred fifty dollars per year for a three-year period.
3. Upon receipt of evidence that a person is liable for the driver responsibility assessment required by this section, the commissioner shall notify such person by first class mail to the address of such person on file with the department or at the current address provided by the United States postal service of the amount of such assessment, the time and manner of making required payments, and that failure to make payment shall result in the suspension of his or her driver's license or privilege of obtaining a driver's license.
4. If a person shall fail to pay any driver responsibility assessment as provided in this section, the commissioner shall suspend such person's driver's license or privilege of obtaining a license. Such suspension shall remain in effect until any and all outstanding driver responsibility assessments have been paid in full.
5. The provisions of this section shall also be applicable to any person convicted of any violation of section forty-nine-a of the navigation law, any person convicted of a violation of section 25.24 of the parks, recreation and historic preservation law, or any person found to have refused a chemical test in accordance with the applicable provisions of either the navigation law or the parks, recreation and historic preservation law not arising out of the same incident as such conviction.

(Emphasis added above wherever bold and/or underlined.)

Violation of section eleven hundred ninety-two of this article A person who operates a vehicle in violation of such subdivision after having been convicted of a violation of any subdivision of section eleven hundred ninety-two of this article within the preceding five years shall be punished by a fine of not less than five hundred dollars nor more than seven hundred fifty dollars, or by imprisonment of not more than thirty days in a penitentiary or county jail or by both such fine and imprisonment. A person who operates a vehicle in violation of such subdivision after having been convicted two or more times of a violation of any subdivision of section eleven hundred ninety-two of this article within the preceding ten years shall be guilty of a misdemeanor, and shall be punished by a fine of not less than seven hundred fifty dollars nor more than fifteen hundred dollars, or by imprisonment of not more than one hundred eighty days in a penitentiary or county jail or by both such fine and imprisonment.

## APPENDIX E: CRIMINAL JUSTICE SYSTEM OVERVIEW

### The Justice System<sup>110</sup>

What is the sequence of events in the criminal justice system?

### The response to crime

#### *The private sector initiates the response to crime*

This first response may come from people, families, neighborhood associations, business, industry, agriculture, educational institutions, the news media, or any other private service to the public.

It involves crime prevention as well as participation in the criminal justice process once a crime has been committed. Private crime prevention is more than providing private security or burglar alarms or participating in neighborhood watch. It also includes a commitment to stop criminal behavior by not engaging in it or condoning it when it is committed by others.

Citizens take part directly in the criminal justice process by reporting crime to the police, by being a reliable participant (for example, a witness or a juror) in a criminal proceeding and by accepting the disposition of the system as just or reasonable. As voters and taxpayers, citizens also participate in criminal justice through the policymaking process that affects how the criminal justice process operates, the resources available to it, and its goals and objectives. At every stage of the process from the original formulation of objectives to the decision about where to locate jails and prisons to the reintegration of inmates into society, the private sector has a role to play. Without such involvement, the criminal justice process cannot serve the citizens it is intended to protect.

#### *The response to crime and public safety involves many agencies and services*

Many of the services needed to prevent crime and make neighborhoods safe are supplied by noncriminal justice agencies, including agencies with primary concern for public health, education, welfare, public works, and housing. Individual citizens as well as public and private sector organizations have joined with criminal justice agencies to prevent crime and make neighborhoods safe.

#### *Criminal cases are brought by the government through the criminal justice system*

We apprehend, try, and punish offenders by means of a loose confederation of agencies at all levels of government. Our American system of justice has evolved from the English common law into a complex series of procedures and decisions. Founded on the concept that crimes against an individual are crimes against the State, our justice system prosecutes people as though they victimized all of society. However, crime victims are involved throughout the process and many justice agencies have programs which focus on helping victims.

There is no single criminal justice system in this country. We have many similar systems that are individually unique. Criminal cases may be handled differently in different jurisdictions, but court decisions based

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<sup>110</sup> U.S. Department of Justice, Bureau of Justice Statistics. <http://www.ojp.gov/bjs/justsys.htm#contents>

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on the due process guarantees of the U.S. Constitution require that specific steps be taken in the administration of criminal justice so that the individual will be protected from undue intervention from the State.

The description of the criminal and juvenile justice systems that follows portrays the most common sequence of events in response to serious criminal behavior

## Entry into the system

The justice system does not respond to most crime because so much crime is not discovered or reported to the police. Law enforcement agencies learn about crime from the reports of victims or other citizens, from discovery by a police officer in the field, from informants, or from investigative and intelligence work.

Once a law enforcement agency has established that a crime has been committed, a suspect must be identified and apprehended for the case to proceed through the system. Sometimes, a suspect is apprehended at the scene; however, identification of a suspect sometimes requires an extensive investigation. Often, no one is identified or apprehended. In some instances, a suspect is arrested and later the police determine that no crime was committed and the suspect is released.

## Prosecution and pretrial services

After an arrest, law enforcement agencies present information about the case and about the accused to the prosecutor, who will decide if formal charges will be filed with the court. If no charges are filed, the accused must be released. The prosecutor can also drop charges after making efforts to prosecute (*nolle prosequi*).

A suspect charged with a crime must be taken before a judge or magistrate without unnecessary delay. At the initial appearance, the judge or magistrate informs the accused of the charges and decides whether there is probable cause to detain the accused person. If the offense is not very serious, the determination of guilt and assessment of a penalty may also occur at this stage.

Often, the defense counsel is also assigned at the initial appearance. All suspects prosecuted for serious crimes have a right to be represented by an attorney. If the court determines the suspect is indigent and cannot afford such representation, the court will assign counsel at the public's expense.

A pretrial-release decision may be made at the initial appearance, but may occur at other hearings or may be changed at another time during the process. Pretrial release and bail were traditionally intended to ensure appearance at trial. However, many jurisdictions permit pretrial detention of defendants accused of serious offenses and deemed to be dangerous to prevent them from committing crimes prior to trial.

The court often bases its pretrial decision on information about the defendant's drug use, as well as residence, employment, and family ties. The court may decide to release the accused on his/her own recognizance or into the custody of a third party after the posting of a financial bond or on the promise of satisfying certain conditions such as taking periodic drug tests to ensure drug abstinence.

In many jurisdictions, the initial appearance may be followed by a preliminary hearing. The main function of this hearing is to discover if there is probable cause to believe that the accused committed a known crime within the jurisdiction of the court. If the judge does not find probable cause, the case is dismissed; however, if the judge or magistrate finds probable cause for such a belief, or the accused waives his or her right to a preliminary hearing, the case may be bound over to a grand jury.



A grand jury hears evidence against the accused presented by the prosecutor and decides if there is sufficient evidence to cause the accused to be brought to trial. If the grand jury finds sufficient evidence, it submits to the court an indictment, a written statement of the essential facts of the offense charged against the accused.

Where the grand jury system is used, the grand jury may also investigate criminal activity generally and issue indictments called grand jury originals that initiate criminal cases. These investigations and indictments are often used in drug and conspiracy cases that involve complex organizations. After such an indictment, law enforcement tries to apprehend and arrest the suspects named in the indictment.

Misdemeanor cases and some felony cases proceed by the issuance of an information, a formal, written accusation submitted to the court by a prosecutor. In some jurisdictions, indictments may be required in felony cases. However, the accused may choose to waive a grand jury indictment and, instead, accept service of an information for the crime.

In some jurisdictions, defendants, often those without prior criminal records, may be eligible for diversion from prosecution subject to the completion of specific conditions such as drug treatment. Successful completion of the conditions may result in the dropping of charges or the expunging of the criminal record where the defendant is required to plead guilty prior to the diversion.

## Adjudication

Once an indictment or information has been filed with the trial court, the accused is scheduled for arraignment. At the arraignment, the accused is informed of the charges, advised of the rights of criminal defendants, and asked to enter a plea to the charges. Sometimes, a plea of guilty is the result of negotiations between the prosecutor and the defendant.

If the accused pleads guilty or pleads *nolo contendere* (accepts penalty without admitting guilt), the judge may accept or reject the plea. If the plea is accepted, no trial is held and the offender is sentenced at this proceeding or at a later date. The plea may be rejected and proceed to trial if, for example, the judge believes that the accused may have been coerced.

If the accused pleads not guilty or not guilty by reason of insanity, a date is set for the trial. A person accused of a serious crime is guaranteed a trial by jury. However, the accused may ask for a bench trial where the judge, rather than a jury, serves as the finder of fact. In both instances the prosecution and defense present evidence by questioning witnesses while the judge decides on issues of law. The trial results in acquittal or conviction on the original charges or on lesser included offenses.

After the trial a defendant may request appellate review of the conviction or sentence. In some cases, appeals of convictions are a matter of right; all States with the death penalty provide for automatic appeal of cases involving a death sentence. Appeals may be subject to the discretion of the appellate court and may be granted only on acceptance of a defendant's petition for a writ of certiorari. Prisoners may also appeal their sentences through civil rights petitions and writs of habeas corpus where they claim unlawful detention.

## Sentencing and Sanctions

After a conviction, sentence is imposed. In most cases the judge decides on the sentence, but in some jurisdictions the sentence is decided by the jury, particularly for capital offenses.

In arriving at an appropriate sentence, a sentencing hearing may be held at which evidence of aggravating or mitigating circumstances is considered. In assessing the circumstances surrounding a convicted person's

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criminal behavior, courts often rely on presentence investigations by probation agencies or other designated authorities. Courts may also consider victim impact statements.

The sentencing choices that may be available to judges and juries include one or more of the following:

- the death penalty;
- incarceration in a prison, jail, or other confinement facility;
- probation - allowing the convicted person to remain at liberty but subject to certain conditions and restrictions such as drug testing or drug treatment;
- fines - primarily applied as penalties in minor offenses; and
- restitution - requiring the offender to pay compensation to the victim.

In some jurisdictions, offenders may be sentenced to alternatives to incarceration that are considered more severe than straight probation but less severe than a prison term. Examples of such sanctions include boot camps, intense supervision often with drug treatment and testing, house arrest and electronic monitoring, denial of Federal benefits, and community service.

In many jurisdictions, the law mandates that persons convicted of certain types of offenses serve a prison term. Most jurisdictions permit the judge to set the sentence length within certain limits, but some have determinate sentencing laws that stipulate a specific sentence length that must be served and cannot be altered by a parole board.

## Corrections

Offenders sentenced to incarceration usually serve time in a local jail or a State prison. Offenders sentenced to less than one year generally go to jail; those sentenced to more than one year go to prison. Persons admitted to the Federal system or a State prison system may be held in prisons with varying levels of custody or in a community correctional facility.

A prisoner may become eligible for parole after serving a specific part of his or her sentence. Parole is the conditional release of a prisoner before the prisoner's full sentence has been served. The decision to grant parole is made by an authority such as a parole board, which has power to grant or revoke parole or to discharge a parolee altogether. The way parole decisions are made varies widely among jurisdictions.

Offenders may also be required to serve out their full sentences prior to release (expiration of term). Those sentenced under determinate sentencing laws can be released only after they have served their full sentence (mandatory release) less any "good time" received while in prison. Inmates get goodtime credits against their sentences automatically or by earning them through participation in programs.

If released by a parole board decision or by mandatory release, the release will be under the supervision of a parole officer in the community for the balance of his or her unexpired sentence. This supervision is governed by specific conditions of release, and the release may be returned to prison for violations of such conditions.

## Recidivism

Once the suspects, defendants, or offenders are released from the jurisdiction of a criminal justice agency, they may be processed through the criminal justice system again for a new crime. Long term studies show

that many suspects who are arrested have prior criminal histories and those with a greater number of prior arrests were more likely to be arrested again. As the courts take prior criminal history into account at sentencing, most prison inmates have a prior criminal history and many have been incarcerated before. Nationally, about half the inmates released from State prison will return to prison.

## **The Structure of the Justice System**

### ***The governmental response to crime is founded in the intergovernmental structure of the United States***

Under our form of government, each State and the Federal Government has its own criminal justice system. All systems must respect the rights of people set forth in court interpretation of the U.S. Constitution and defined in case law.

State constitutions and laws define the criminal justice system within each State and delegate the authority and responsibility for criminal justice to various jurisdictions, officials, and institutions. State laws also define criminal behavior and groups of children or acts under jurisdiction of the juvenile courts.

Municipalities and counties further define their criminal justice systems through local ordinances that prescribe the local agencies responsible for criminal justice processing that were not established by the State.

Congress has also established a criminal justice system at the Federal level to respond to Federal crimes such as a bank robbery, kidnapping, and transporting stolen goods across State lines.

### **The response to crime is mainly a State and local function**

Very few crimes are under exclusive Federal jurisdiction. The responsibility to respond to most crime rests with State and local governments. Police protection is primarily a function of cities and towns. Corrections is primarily a function of State governments. Most justice personnel are employed at the local level.

### **Discretion is exercised throughout the criminal justice system**

Very few crimes are under exclusive Federal jurisdiction. The responsibility to respond to most crime rests with State and local governments. Police protection is primarily a function of cities and towns. Corrections is primarily a function of State governments. Most justice personnel are employed at the local level.

Discretion is “an authority conferred by law to act in certain conditions or situations in accordance with an official’s or an official agency’s own considered judgment and conscience.”<sup>111</sup> Discretion is exercised throughout the government. It is a part of decision making in all government systems from mental health to education, as well as criminal justice. The limits of discretion vary from jurisdiction to jurisdiction.

Concerning crime and justice, legislative bodies have recognized that they cannot anticipate the range of circumstances surrounding each crime, anticipate local mores, and enact laws that clearly encompass all con-

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<sup>111</sup> Roscoe Pound, “Discretion, dispensation and mitigation: The problem of the individual special case,” *New York University Law Review* (1960) 35:925, 926.

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duct that is criminal and all that is not.<sup>112</sup> Therefore, persons charged with the day-to-day response to crime are expected to exercise their own judgment within limits set by law. Basically, they must decide

- whether to take action;
- where the situation fits in the scheme of law, rules, and precedent; and
- which official response is appropriate.<sup>113</sup>

To ensure that discretion is exercised responsibly, government authority is often delegated to professionals. Professionalism requires a minimum level of training and orientation, which guide officials in making decisions. The professionalism of policing is due largely to the desire to ensure the proper exercise of police discretion.

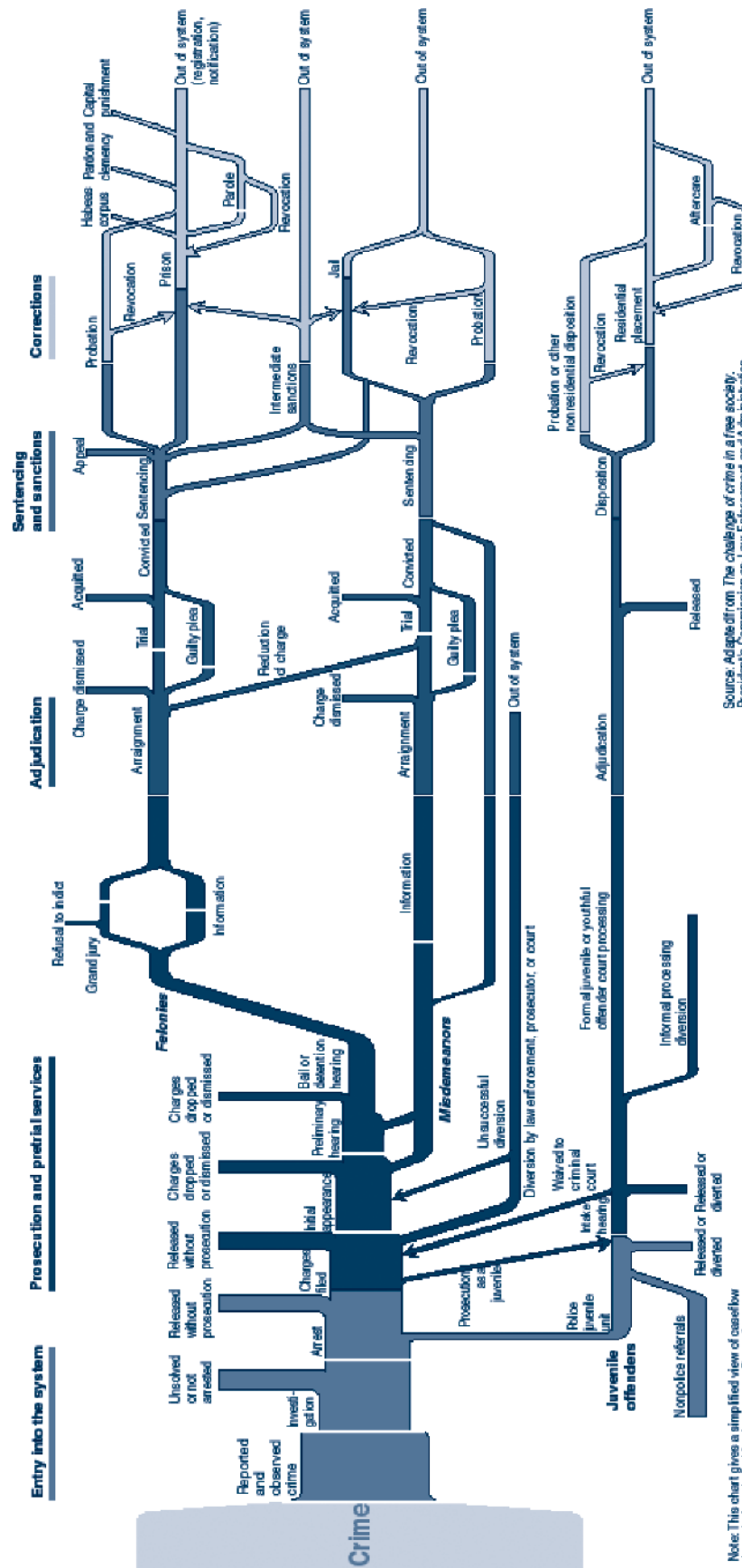
The limits of discretion vary from State to State and locality to locality. For example, some State judges have wide discretion in the type of sentence they may impose. In recent years other States have sought to limit the judges discretion in sentencing by passing mandatory sentencing laws that require prison sentences for certain offenses.

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<sup>112</sup> Wayne R. LaFare, *Arrest: The decision to take a suspect into custody* (Boston: Little, Brown & Co., 1964), p. 63-184.

<sup>113</sup> Memorandum of June 21, 1977, from Mark Moore to James Vorenberg, "Some abstract notes on the issue of discretion."

## What is the sequence of events in the criminal justice system?



Source: Adapted from *The challenge of crime in a free society*, President's Commission on Law Enforcement and Administration of Justice, 1967. This revision, a result of the Symposium on the 30th Anniversary of the President's Commission, was prepared by the Bureau of Justice Statistics in 1997.

Note: This chart gives a simplified view of caseflow through the criminal justice system. Procedures vary among jurisdictions. The weights of the lines are not intended to show actual size of caseflows.

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