

## State DUI Laws: Hawaii

**Legal Blood Alcohol Content Level: .08**

**Automatic Suspension of License for Failure of Blood Alcohol Test or Refusal to Submit to Test: Yes**

**Ignition Interlock Requirement upon Conviction: No**

**Felony Conviction for Repeat Offenses: Yes**

### Hawaii Revised Statutes

#### § 286-104. What persons shall not be licensed

The examiner of drivers shall not issue any license hereunder:

(1) To any person whose license has been suspended by a court of competent jurisdiction during the suspension period; nor to any person whose license has been revoked until the expiration of one year after the date of the revocation, or until the expiration of the period of revocation specified by law, whichever is greater; nor to any person who, while unlicensed, has within two years been convicted of operating a vehicle under the influence of an intoxicant or, prior to January 1, 2002, of driving under the influence of alcohol or drugs;

(2) To any person who is required by this part to take an examination, unless such person has successfully passed the examination;

(3) To any person who is required under the motor vehicle financial responsibility laws of this State to deposit proof of financial responsibility and who has not deposited such proof;

(4) To any person when the examiner of drivers has good cause to believe that such person by reason of physical or mental disability would not be able to operate a motor vehicle with safety upon the highways;

(5) To any person who is under eighteen years of age; provided that a person who is fifteen years and six months of age may be granted an instruction permit; and provided further that a person who is sixteen to seventeen years of age may be granted a license upon satisfying the requirements of sections 286-108 and 286-109, which license shall be valid for four years and may be suspended or revoked by a judge having jurisdiction over the holder of the license. Upon revocation of the license, the person shall not be eligible to operate a motor vehicle on the highway until the person is eighteen years of age and has again satisfied the requirements of sections 286-108 and 286-109; or

(6) To any person who is not in compliance with section 286-102.5.

Any person denied a license under this or any other section of this part shall have a right of appeal as provided in section 286-129.

#### § 291-3.1. Consuming or possessing intoxicating liquor while operating motor vehicle or moped

(a) No person shall consume any intoxicating liquor while operating a motor vehicle or moped upon any public street, road, or highway.

(b) No person shall possess, while operating a motor vehicle or moped upon any public street, road, or highway, any bottle, can, or other receptacle containing any intoxicating liquor which has been opened, or a seal broken, or the contents of which have been partially removed.

(c) Any person violating this section shall be fined not more than \$ 2,000 or imprisoned not more than thirty days, or both.

### **§ 291E-1. Definitions**

As used in this chapter, unless the context otherwise requires:

"Administrative revocation" means termination of the respondent's:

- (1) License and the privilege to operate a vessel underway on or in the waters of the State pursuant to part III; and
- (2) Registration of any motor vehicle registered to a respondent found to be a repeat intoxicated driver, but does not include any revocation imposed under section 291E-61 or 291E-61.5.

"Alcohol" means the product of distillation of any fermented liquid, regardless of whether rectified, whatever may be the origin thereof, and includes ethyl alcohol, lower aliphatic alcohol, and phenol as well as synthetic ethyl alcohol, but not denatured or other alcohol that is considered not potable under the customs laws of the United States.

"Alcohol concentration" means either grams of alcohol per one hundred milliliters or cubic centimeters of blood or grams of alcohol per two hundred ten liters of breath.

"Alcohol enforcement contact" means:

- (1) Any administrative revocation ordered pursuant to part III;
- (2) Any administrative revocation ordered pursuant to part XIV of chapter 286, as that part was in effect on or before December 31, 2001;
- (3) Any suspension or revocation of any license or motor vehicle registration, or both, or any suspension or revocation of a privilege to operate a vessel underway imposed by this or any other state or federal jurisdiction for refusing to submit to a test for alcohol concentration;
- (4) Any conviction in this State for operating or being in physical control of a vehicle while having an unlawful alcohol concentration or while under the influence of alcohol; or
- (5) Any conviction in any other state or federal jurisdiction for an offense that is comparable to operating or being in physical control of a vehicle while having an unlawful alcohol concentration or while under the influence of alcohol.

"Certified substance abuse counselor" means any person certified by the department of health pursuant to section 321-193(10), or any other substance abuse specialist or medical practitioner the director of health may appoint to carry out the functions of a certified substance abuse counselor under this chapter.

"Director" means the administrative director of the courts or any other person within the judiciary appointed by the director to conduct administrative reviews or hearings or carry out other functions relating to administrative revocation under part III.

"Drug" means any controlled substance, as defined and enumerated in schedules I through IV of chapter 329, or its metabolites.

"Drug enforcement contact" means:

- (1) Any administrative revocation ordered pursuant to part III;
- (2) Any administrative revocation ordered pursuant to part XIV of chapter 286, as that part was in effect on or before December 31, 2001;
- (3) Any suspension or revocation of license or any suspension or revocation of a privilege to operate a vessel underway imposed by this or any other state or federal jurisdiction for refusing to submit to a test for drug content in the person's blood or urine;
- (4) Any conviction in this State for operating or being in physical control of a vehicle while having an unlawful drug content in the blood or urine or while under the influence of drugs; or
- (5) Any conviction in any other state or federal jurisdiction for an offense that is comparable to operating or being in physical control of a vehicle while having an unlawful drug content in the blood or urine or while under the influence of drugs.

"Household member" means:

- (1) Persons who reside in the same dwelling unit as the respondent; or
- (2) Persons under twenty-one years of age who are related to the respondent by marriage, blood, or adoption, regardless of whether they reside in the same dwelling unit with the respondent.

"Impair" means to weaken, to lessen in power, to diminish, to damage, or to make worse by diminishing in some material respect or otherwise affecting in an injurious manner.

"Intoxicant" means alcohol or any drug, as defined in this section.

"Law enforcement officer" means any public servant, whether employed by the State, a county, or by the United States, vested by law with a duty to maintain public order or to make arrests for offenses or to enforce the criminal laws, and includes a conservation and resources enforcement officer as specified in section 199-3.

"License" means any driver's license or any other license or permit to operate a motor vehicle issued under, or granted by, the laws of this State and includes:

- (1) Any learner's permit or instruction permit;
- (2) The privilege of any person to operate a motor vehicle, regardless of whether the person holds a valid license;
- (3) Any nonresident's operating privilege; and
- (4) The eligibility, including future eligibility, of any person to apply for a license or privilege to operate a motor vehicle.

"Measurable amount of alcohol" means a test result equal to or greater than .02 but less than .08 grams of alcohol per one hundred milliliters or cubic centimeters of blood or equal to or greater than .02 but less than .08 grams of alcohol per two hundred ten liters of breath.

"Moped" has the same meaning as in section 291C-1.

"Motor vehicle" has the same meaning as in section 291C-1, except that it specifically includes a moped.

"Nonresident's operating privilege" means the privilege conferred by law upon a nonresident to operate a vehicle in this State.

"Notice of administrative revocation" or "notice" means the written notice issued to the respondent pursuant to section 291E-33.

"Number plates" refer to the number plates or special number plates, which are commonly known as license plates, that are issued under sections 249-9, 249-9.1, 249-9.2, and 249-9.3 and that are required to be attached on a motor vehicle pursuant to sections 249-1 to 249-13.

"Operate" means to drive or assume actual physical control of a vehicle upon a public way, street, road, or highway or to navigate or otherwise use or assume physical control of a vessel underway on or in the waters of the State.

"Operator" means a person who drives or assumes actual physical control of a vehicle or a person who operates, navigates, or who has an essential role in the operation of a vessel underway.

"Preliminary alcohol screening device" means a device designed to detect and verify the presence of alcohol or provide an estimated value of alcohol concentration.

"Privilege" refers to the authority to operate a vessel underway on or in the waters of the State.

"Public way, street, road, or highway" includes:

- (1) The entire width, including berm or shoulder, of every road, alley, street, way, right of way, lane, trail, highway, or bridge;
- (2) A parking lot, when any part thereof is open for use by the public or to which the public is invited for entertainment

or business purposes;

(3) Any bicycle lane, bicycle path, bicycle route, bikeway, controlled-access highway, laned roadway, roadway, or street, as defined in section 291C-1; or

(4) Any public highway, as defined in section 264-1.

"Qualified household member" means a household member of the respondent who has a license that has not expired or been suspended or revoked.

""Repeat intoxicated driver" means a person who previously:

(1) Has been convicted, during the five years preceding the date of arrest, of one or more violations under:

(A) Section 291E-61 or 291E-61.5, as a result of having consumed alcohol; or

(B) Section 291-4 or 291-4.4, as those sections were in effect on or before December 31, 2001;

(2) Has been convicted, during the ten years preceding the date of arrest, of three or more violations under:

(A) Section 291E-61 or 291E-61.5, as a result of having consumed alcohol; or

(B) Section 291-4 or 291-4.4, as those sections were in effect on or before December 31, 2001; or

(3) Has had one prior alcohol enforcement contact during the five years preceding the date of arrest, two prior alcohol enforcement contacts during the seven years preceding the date of arrest, or three or more prior alcohol enforcement contacts during the ten years preceding the date of arrest.

"Respondent" means a person to whom a notice of administrative revocation has been issued following an arrest for a violation of section 291E-61 [A] OR 291E-61.5 [A] or following the collection of a blood or urine sample from the person, pursuant to section 291E-21, because there was probable cause to believe that the person has violated section 291E-61 or 291E-61.5.

"State" means: any state or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico; the United States Virgin Islands; American Samoa; Guam; any province or territory of the Dominion of Canada; and the Commonwealth of the Northern Mariana Islands, except when the word, in context, clearly refers to the State of Hawaii.

"Substance" and "substance abuse" have the same meanings as provided in section 321-191.

"Temporary number plates" refers to the temporary number plates given, along with the temporary vehicle registration, to a respondent pursuant to section 291E-33, but does not include a temporary number plate attached to a new vehicle pursuant to sections 249-7.5 and 286-53.

"Temporary permit" means that portion of the notice of administrative revocation that, when completed by a law enforcement officer, permits the respondent to operate a vehicle for thirty days in the case of an alcohol related offense

and forty-four days in the case of a drug related offense or until such time as the director may establish under part III.

"Temporary vehicle registration" means the portion of the notice of administrative revocation that, when completed by the arresting law enforcement officer, permits the respondent to drive a vehicle registered in the name of the respondent for thirty days or until the time established by the director under part III.

"Under the influence" means that a person:

(1) Is under the influence of alcohol in an amount sufficient to impair the person's normal mental faculties or ability to care for the person and guard against casualty;

(2) Is under the influence of any drug that impairs the person's ability to operate the vehicle in a careful and prudent manner;

(3) Has .08 or more grams of alcohol per two hundred ten liters of the person's breath; or

(4) Has .08 or more grams of alcohol per one hundred milliliters or cubic centimeters of the person's blood.

"Underway" means that a vessel is not at anchor, made fast to the shore, or aground.

"Vehicle" includes a:

(1) Motor vehicle;

(2) Moped; and

(3) Vessel.

"Vessel" means all description of watercraft that are used or are capable of being used as a means of transportation on or in the water.

"Waters of the State" means any waters within the jurisdiction of the State, the marginal seas adjacent to the State, and the high seas when navigated as part of a journey or ride to or from the shore of the State.

### **§ 291E-3. Evidence of intoxication**

(a) In any criminal prosecution for a violation of section 291E-61 OR 291E-61.5 or in any proceeding under part III:

(1) .08 or more grams of alcohol per one hundred milliliters or cubic centimeters of the person's blood;

(2) .08 or more grams of alcohol per two hundred ten liters of the person's breath; or

(3) The presence of one or more drugs in an amount sufficient to impair the person's ability to operate a vehicle in a careful and prudent manner, within three hours after the time of the alleged violation as shown by chemical analysis or other approved analytical techniques of the person's blood, breath, or urine shall be competent evidence that the person

was under the influence of an intoxicant at the time of the alleged violation.

(b) In any criminal prosecution for a violation of section 291E-61 or 291E-61.5, the amount of alcohol found in the defendant's blood or breath within three hours after the time of the alleged violation as shown by chemical analysis or other approved analytical techniques of the defendant's blood or breath shall be competent evidence concerning whether the defendant was under the influence of an intoxicant at the time of the alleged violation and shall give rise to the following presumptions:

(1) If there were .05 or less grams of alcohol per one hundred milliliters or cubic centimeters of defendant's blood or .05 or less grams of alcohol per two hundred ten liters of defendant's breath, it shall be presumed that the defendant was not under the influence of alcohol at the time of the alleged violation; and

(2) If there were in excess of .05 grams of alcohol per one hundred milliliters or cubic centimeters of defendant's blood or .05 grams of alcohol per two hundred ten liters of defendant's breath, but less than .08 grams of alcohol per one hundred milliliters or cubic centimeters of defendant's blood or .08 grams of alcohol per two hundred ten liters of defendant's breath, that fact may be considered with other competent evidence in determining whether the defendant was under the influence of alcohol at the time of the alleged violation, but shall not of itself give rise to any presumption.

(c) Nothing in this section shall be construed as limiting the introduction, in any criminal proceeding for a violation under section 291E-61 or 291E-61.5 or in any proceeding under part III, of relevant evidence of a person's alcohol concentration or drug content obtained more than three hours after an alleged violation; provided that the evidence is offered in compliance with the Hawaii rules of evidence.

#### **§ 291E-11. Implied consent of operator of vehicle to submit to testing to determine alcohol concentration and drug content**

(a) Any person who operates a vehicle upon a public way, street, road, or highway or on or in the waters of the State shall be deemed to have given consent, subject to this part, to a test or tests approved by the director of health of the person's breath, blood, or urine for the purpose of determining alcohol concentration or drug content of the person's breath, blood, or urine, as applicable.

(b) The test or tests shall be administered at the request of a law enforcement officer having probable cause to believe the person operating a vehicle upon a public way, street, road, or highway or on or in the waters of the State is under the influence of an intoxicant or is under the age of twenty-one and has consumed a measurable amount of alcohol, only after:

(1) A lawful arrest; and

(2) The person has been informed by a law enforcement officer of the sanctions under section 291E-41 or 291E-65, as applicable to the offense.

(c) If there is probable cause to believe that a person is in violation of section 291E-64, as a result of being under the age of twenty-one and having consumed a measurable amount of alcohol, or section 291E-61 or 291E-61.5, as a result of having consumed alcohol, then the person shall elect to take a breath or blood test, or both, for the purpose of determining the alcohol concentration.

(d) If there is probable cause to believe that a person is in violation of section 291E-61 or 291E-61.5, as a result of having consumed any drug, then the person shall elect to take a blood or urine test, or both, for the purpose of determining the drug content. Drug content shall be measured by the presence of any drug or its metabolic products, or both.

(e) A person who chooses to submit to a breath test under subsection (c) also may be requested to submit to a blood or urine test, if the law enforcement officer has probable cause to believe that the person was operating a vehicle while under the influence of any drug under section 291E-61 or 291E-61.5 and the officer has probable cause to believe that a blood or urine test will reveal evidence of the person being under the influence of any drug. The law enforcement officer shall state in the officer's report the facts upon which that belief is based. The person shall elect to take a blood or urine test, or both, for the purpose of determining the person's drug content. Results of a blood or urine test conducted to determine drug content also shall be admissible for the purpose of determining the person's alcohol concentration. Submission to testing for drugs under subsection (d) or this subsection shall not be a substitute for alcohol tests requested under subsection (c).

(f) The use of a preliminary alcohol screening device by a law enforcement officer shall not replace a breath, blood, or urine test required under this section. The analysis from the use of a preliminary alcohol screening device shall only be used in determining probable cause for the arrest.

(g) Any person tested pursuant to this section who is convicted or has the person's license or privilege suspended or revoked pursuant to this chapter may be ordered to reimburse the county for the cost of any blood or urine tests, or both, conducted pursuant to this section. If reimbursement is so ordered, the court or the director, as applicable, shall order the person to make restitution in a lump sum, or in a series of prorated installments, to the police department or other agency incurring the expense of the blood or urine test, or both.

#### **§ 291E-12. Persons qualified to take blood specimen**

No person, other than a physician, registered nurse, phlebotomist deemed qualified by the director of a clinical laboratory that is licensed by the State, or person licensed in a clinical laboratory occupation under section 321-13, may withdraw blood for the purpose of determining the alcohol concentration or drug content therein. This limitation shall not apply to the taking of a breath or urine specimen.

#### **§ 291E-13. Additional tests**

The person tested may choose any physician, registered nurse, or person licensed in a clinical laboratory occupation under section 321-13 to withdraw blood and also may choose any qualified person to administer a test or tests in addition to any administered at the direction of a law enforcement officer. The result of the test or tests may be used as provided in section 291E-3. The failure or inability to obtain an additional test by a person shall not preclude the admission of the test or tests administered at the direction of a law enforcement officer. Upon the request of the person who is tested, full information concerning the test or tests administered shall be made available to that person.

#### **§ 291E-14. Consent of person incapable of refusal not withdrawn**

The consent of a person deemed to have given the person's consent pursuant to section 291E-11 shall not be

withdrawn by reason of the person's being dead, unconscious, or in any other condition that renders the person incapable of consenting to examination, and the test may be given. In such event, a test of the person's blood or urine shall be administered.

**§ 291E-15. Refusal to submit to breath, blood, or urine test; subject to administrative revocation proceedings**

If a person under arrest refuses to submit to a breath, blood, or urine test, none shall be given, except as provided in section 291E-21, but the person shall be subject to the procedures and sanctions under part III or section 291E-65, as applicable.

**§ 291E-16. Proof of refusal; admissibility**

If a legally arrested person refuses to submit to a test of the person's breath, blood, or urine, evidence of refusal shall be admissible only in a proceeding under part III or section 291E-65 and shall not be admissible in any other action or proceeding, whether civil or criminal.

**§ 291E-17. Other evidence not excluded**

This part shall not limit the introduction of any other competent evidence bearing on the question of whether the person was under the influence of an intoxicant or was operating a vehicle while under the age of twenty-one and after consuming a measurable amount of alcohol.

**§ 291E-18. Test results to be collected**

The results of any test for intoxicants made upon any person, including any person who has been fatally injured in a traffic collision or the operator of a vehicle involved in a collision that resulted in another person's death, shall be sent to the state director of transportation, who shall compile the data without revealing the identity of any individual tested. This data shall be available only to the state and county highway safety councils and to other agencies the director of transportation deems necessary and advisable.

**§ 291E-19. Authorization to establish intoxicant control roadblock programs**

The police departments of the respective counties may establish and implement intoxicant control roadblock programs in accordance with the minimum standards and guidelines provided in section 291E-20. The chief of police in any county establishing an intoxicant control roadblock program pursuant to this section shall specify the procedures to be followed in carrying out the program in rules adopted under chapter 91; provided that the procedures shall be in conformity with and not more intrusive than the standards and guidelines described in section 291E-20. In the case of internal police standards that do not fall within the definition of "rule" under section 91-1(4), failure to comply scrupulously with such internal police procedures shall not invalidate a roadblock that otherwise meets the minimum statutory criteria provided in section 291E-20.

**§ 291E-20. Minimum standards for roadblock procedures**

(a) Every intoxicant control roadblock program shall:

(1) Require that all vehicles approaching roadblocks be stopped or that certain vehicles be stopped by selecting vehicles

in a specified numerical sequence or pattern;

(2) Require that roadblocks be located at fixed locations for a maximum three-hour period;

(3) Provide for the following minimum safety precautions at every roadblock:

(A) Proper illumination;

(B) Off-road or otherwise safe and secure holding areas for vehicles involved in any roadblock stop;

(C) Uniformed law enforcement officers carrying proper identification;

(D) Adequate advance warning of the fact and purpose of the roadblocks, either by sign posts, flares, or other alternative methods;

(E) Termination of roadblocks at the discretion of the law enforcement officer in charge where traffic congestion would otherwise result; and

(4) Provide for a sufficient quantity and visibility of uniformed officers and official vehicles to ensure speedy compliance with the purpose of the roadblocks and to move traffic with a minimum of inconvenience.

(b) Nothing in this section shall prohibit the establishment of procedures to make roadblock programs less intrusive than required by the minimum standards provided in this section.

### **§ 291E-21. Applicable scope of part; mandatory testing in the event of a collision resulting in injury or death**

(a) Nothing in this part shall be construed to prevent a law enforcement officer from obtaining a sample of breath, blood, or urine, from the operator of any vehicle involved in a collision resulting in injury to or the death of any person, as evidence that the operator was under the influence of an intoxicant.

(b) If a health care provider who is providing medical care, in a health care facility, to any person involved in a vehicle collision:

(1) Becomes aware, as a result of any blood or urine test performed in the course of medical treatment, that:

(A) The alcohol concentration in the person's blood meets or exceeds the amount specified in section 291E-61(a)(4) or 291E-61.5(A)(2)(D); or

(B) The person's blood or urine contains one or more drugs that are capable of impairing a person's ability to operate a vehicle in a careful and prudent manner; and

(2) Has a reasonable belief that the person was the operator of a vehicle involved in the collision, the health care provider shall notify, as soon as reasonably possible, any law enforcement officer present at the health care facility to investigate the collision. If no law enforcement officer is present, the health care provider shall notify the county police department in

the county where the collision occurred. If the health care provider is aware of any blood or urine test result, as provided in paragraph (1), but lacks information to form a reasonable belief as to the identity of the operator involved in a vehicle collision, as provided in paragraph (2), then the health care provider shall give notice to a law enforcement officer present or to the county police department, as applicable, for each person involved in a vehicle collision whose alcohol concentration in the person's blood meets or exceeds the amount specified in section 291E-61(a)(4) or 291E-61.5(A)(2)(D) or whose blood or urine contains one or more drugs. The notice by the health care provider shall consist of the name of the person being treated, the blood alcohol concentration or drug content disclosed by the test, and the date and time of the administration of the test. This notice shall be deemed to satisfy the intoxication element necessary to establish the probable cause requirement set forth in subsection (c).

(c) In the event of a collision resulting in injury or death and if a law enforcement officer has probable cause to believe that a person involved in the collision has committed a violation of section 707-702.5, 707-703, 707-704, 707-705, 707-706, 291E-61, 291E-61.5, or 291E-64, the law enforcement officer shall request that a sample of blood or urine be recovered from the vehicle operator or any other person suspected of committing a violation of section 707-702.5, 707-703, 707-704, 707-705, 707-706, 291E-61, 291E-61.5, or 291E-64. If the person involved in the collision is not injured or refuses to be treated for any injury, the law enforcement officer may offer the person a breath test in lieu of a blood or urine test. If the person declines to perform a breath test, the law enforcement officer shall request a blood or urine sample pursuant to subsection (d). The act of declining to perform a breath test under this section shall not be treated as a refusal under chapter 291E and shall not relieve the declining person from the requirement of providing a blood or urine sample under this section.

(d) The law enforcement officer shall make the request under subsection (c) to the hospital or medical facility treating the person from whom the blood or urine is to be recovered. If the person is not injured or refuses to be treated for any injury, the law enforcement officer shall make the request of a blood or urine sample under subsection (c) to a person authorized under section 291E-12; provided that a law enforcement officer may transport that person to another police facility or a hospital or medical facility that is capable of conducting a breath, blood, or urine test. Upon the request of the law enforcement officer that blood or urine be recovered pursuant to this section, and except where the person to perform the withdrawal of a blood sample or to obtain a urine sample or the responsible attending personnel at the hospital or medical facility determines in good faith that recovering or attempting to recover blood or urine from the person presents an imminent threat to the health of the medical personnel or others, the person authorized under section 291E-12 shall:

- (1) Recover the sample in compliance with section 321-161; and
- (2) Provide the law enforcement officer with the blood or urine sample requested.

(e) Any person complying with this section shall be exempt from liability pursuant to section 663-1.9 as a result of compliance.

(f) As used in this section, unless the context otherwise requires:

"Health care facility" includes any program, institution, place, building, or agency, or portion thereof, private or public, whether organized for profit or not, that is used, operated, or designed to provide medical diagnosis, treatment, or rehabilitative or preventive care to any person. The term includes health care facilities that are commonly referred to as hospitals, outpatient clinics, organized ambulatory health care facilities, emergency care facilities and centers, health

maintenance organizations, and others providing similarly organized services regardless of nomenclature.

"Health care provider" means a person who is licensed, certified, or otherwise authorized or permitted by law to administer health care in the ordinary course of business or practice of a profession.

### **§ 291E-31. Notice of administrative revocation; effect**

As used in this part, the notice of administrative revocation:

(1) Establishes that the respondent's license and privilege to operate a vehicle in the State or on or in the waters of the State shall be terminated:

(A) Thirty days after the date the notice of administrative revocation is issued in the case of an alcohol related offense;

(B) Forty-four days after the date the notice of administrative revocation is issued in the case of a drug related offense; or

(C) Such later date as is established by the director under section 291E-38, if the director administratively revokes the respondent's license and privilege;

(2) Establishes that the registration of any motor vehicle registered to a respondent who is a repeat intoxicated driver shall be terminated thirty days after the date of an arrest pursuant to section 291E-33(c);

(3) Establishes the date on which administrative revocation proceedings against the respondent were initiated; and

(4) Serves as a temporary permit, if applicable, to operate a vehicle as provided in section 291E-33.

### **§ 291E-32. Criminal prosecution**

(a) Criminal prosecution under section 291E-61 or 291E-61.5 may be commenced concurrently with administrative revocation proceedings under this part; provided that documentary and testimonial evidence provided by the respondent during the administrative proceeding shall not be admissible against the respondent in any proceeding under section 291E-61 or 291E-61.5 arising out of the same occurrence.

(b) When a person's license and privilege to operate a vehicle is revoked under this part and the person also is convicted of an offense under section 291E-61 or 291E-61.5 arising out of the same occurrence, the total period of revocation imposed in the two proceedings shall not exceed the longer period of revocation imposed in either proceeding. If the person is convicted under section 291E-61 OR 291E-61.5 prior to completion of administrative proceedings, the person shall surrender the temporary permit issued under this part at the time of entry of a plea of guilty or no contest, entry of a verdict of guilty, or of sentencing, whichever occurs first.

### **§ 291E-33. Probable cause determination; issuance of notice of administrative revocation; procedures**

(a) Whenever a person is arrested for a violation of section 291E-61 or 291E-61.5 on a determination by the arresting

law enforcement officer that:

(1) There was reasonable suspicion to stop the vehicle or the vehicle was stopped at an intoxicant control roadblock established and operated in compliance with sections 291E-19 and 291E-20; and

(2) There was probable cause to believe that the person was operating the vehicle while under the influence of an intoxicant; the law enforcement officer immediately shall take possession of any license held by the person and request the person to take a test for alcohol concentration, in the case of an alcohol related offense, or a test for drug content in the blood or urine, in the case of a drug related offense. The law enforcement officer shall inform the person that, in the case of an alcohol related offense, the person shall elect to take a breath test, a blood test, or both, pursuant to section 291E-11. In the case of a drug related offense, the person shall elect to take a blood test, a urine test, or both, pursuant to section 291E-11. The law enforcement officer also shall inform the person of the sanctions under section 291E-41, including the sanction for refusing to take a breath, blood, or urine test. Thereafter, the law enforcement officer shall complete and issue to the person a notice of administrative revocation and shall indicate thereon whether the notice shall serve as a temporary permit. The notice shall serve as a temporary permit, unless, at the time of arrest: the person was unlicensed; the person's license or privilege to operate a vehicle was revoked or suspended; or the person had no license in the person's possession.

(b) Whenever a law enforcement officer determines that, as the result of a blood or urine test performed pursuant to section 291E-21, there is probable cause to believe that a person being treated in a hospital or medical facility has violated section 291E-61 or 291E-61.5, the law enforcement officer immediately shall take possession of any license held by the person and shall complete and issue to the person a notice of administrative revocation and indicate thereon whether the notice shall serve as a temporary permit. The notice shall serve as a temporary permit unless, at the time the notice was issued: the person was unlicensed; the person's license or privilege to operate a vehicle was revoked or suspended; or the person had no license in the person's possession.

(c) Whenever a respondent under this section is a repeat intoxicated driver, the arresting law enforcement officer shall take possession of the motor vehicle registration and, if the motor vehicle being driven by the respondent is registered to the respondent, remove the number plates and issue a temporary motor vehicle registration and temporary number plates for the motor vehicle. No temporary motor vehicle registration or temporary number plates shall be issued if the respondent's registration has expired or been revoked. The applicable police department, upon determining that the respondent is a repeat intoxicated driver, shall notify the appropriate county director of finance to enter a stopper on the motor vehicle registration files to prevent the respondent from conducting any motor vehicle transactions, except as permitted under this part.

#### **§ 291E-34. Notice of administrative revocation; contents**

(a) The notice of administrative revocation shall provide, at a minimum and in clear language, the following general information relating to administrative revocation:

(1) The statutory authority for administrative revocation;

(2) An explanation of the distinction between administrative revocation and a suspension or revocation imposed under section 291E-61 or 291E-61.5; and

(3) That criminal charges filed pursuant to section 291E-61 or 291E-61.5 may be prosecuted concurrently with the administrative action."

(b) The notice, when completed by the law enforcement officer and issued to the respondent, shall contain at a minimum the following information relating to the incident that gives rise to the issuance of the notice of administrative revocation:

- (1) Information identifying the respondent;
- (2) The specific violation for which the respondent was arrested;
- (3) The date issued and the date the administrative revocation is scheduled to go into effect;
- (4) That the respondent was informed of the sanctions of this part and of the consequences of refusing to be tested for alcohol concentration or drug content in the blood or urine and whether the respondent consented to be tested;
- (5) The expiration date of the temporary permit, and the temporary motor vehicle registration and temporary number plates if applicable; and
- (6) That the issuance of the notice of administrative revocation will be administratively reviewed.

(c) The notice shall provide, at a minimum, the following information relating to the administrative review:

- (1) That the review is automatic;
- (2) That the respondent, within three days of the issuance of the notice of administrative revocation in the case of an alcohol related offense and within seventeen days of the issuance of the notice of administrative revocation in the case of a drug related offense, may submit written information demonstrating why the respondent's license and privilege to operate a vehicle, and motor vehicle registration if applicable, should not be administratively revoked;
- (3) The address or location where the respondent may submit the information;
- (4) That the respondent is not entitled to be present or represented at the administrative review; and
- (5) That the administrative review decision shall be mailed to the respondent:
  - (A) No later than eight days after the date of the issuance of the notice of administrative revocation in the case of an alcohol related offense; and
  - (B) No later than twenty-two days after the date of the issuance of the notice of administrative revocation in the case of a drug related offense.

(d) The notice shall state that, if the respondent's license and privilege to operate a vehicle, and motor vehicle registration if applicable, are not administratively revoked after the review, the respondent's license, and if applicable, motor vehicle registration and any number plates taken into custody, shall be returned, unless a subsequent alcohol or drug enforcement contact has occurred, along with a certified statement that the administrative revocation proceedings

have been terminated.

(e) The notice shall state that, if the respondent's license and privilege to operate a vehicle, and motor vehicle registration if applicable, are administratively revoked after the review, a decision shall be mailed to the respondent, or to the parent or guardian of the respondent if the respondent is under the age of eighteen, that shall contain, at a minimum, the following information:

(1) The reasons why the respondent's license and privilege to operate a vehicle, and motor vehicle registration if applicable, were administratively revoked;

(2) That the respondent may request the director, within six days of the date the decision is mailed, to schedule an administrative hearing to review the administrative revocation;

(3) That, if the respondent's request for an administrative hearing is received by the director within six days of the date the decision was mailed, the hearing shall be scheduled to commence:

(A) No later than twenty-five days after the date of the issuance of the notice of administrative revocation in the case of an alcohol related offense; and

(B) No later than thirty-nine days after the date of the issuance of the notice of administrative revocation in the case of a drug related offense;

(4) The procedure to request an administrative hearing;

(5) That failure to request an administrative hearing within the time provided shall cause the administrative revocation to take effect for the period and under the conditions established by the director in the decision;

(6) That the respondent may regain the right to a hearing by requesting the director, within sixty days after the issuance of the notice of administrative revocation, to schedule a hearing;

(7) That the director shall schedule the hearing to commence no later than thirty days after a request under paragraph (6) is received, but that, except as provided in section 291E-38(k), the temporary permit, and temporary motor vehicle registration and temporary number plates if applicable, shall not be extended if the respondent fails to request an administrative hearing within the initial six-day period provided for that purpose;

(8) That failure to attend the hearing shall cause the administrative revocation to take effect for the period and under the conditions indicated;

(9) The duration of the administrative revocation and other conditions that may be imposed, including: referral to the driver's education program for an assessment of the respondent's substance abuse or dependence and the need for treatment; and

(10) That, pursuant to section 291E-48, the director may grant a special motor vehicle registration to a qualified household member or to a co-owner of any motor vehicle owned by the respondent, upon a determination that the person is completely dependent on the motor vehicle for the necessities of life; provided that the special motor vehicle registration shall not be valid for use by the respondent.

(f) The notice shall provide, at a minimum, the following information relating to administrative hearings:

(1) That the respondent shall have six days from the date the administrative review decision was mailed to request that an administrative hearing be scheduled;

(2) That a request for an administrative hearing and payment of a \$ 30 fee, unless waived pursuant to section 291E-39, shall entitle the respondent to review and copy, prior to the hearing, all documents that were considered at the administrative review, including the arrest report and the sworn statements;

(3) That the respondent may be represented by an attorney, submit evidence, give testimony, and present and cross-examine witnesses;

(4) That, in cases where the respondent is under the age of eighteen, a parent or guardian must be present; and

(5) That a written decision shall be mailed no later than five days after completion of the hearing.

(g) The notice shall state that, if the administrative revocation is reversed after the hearing, the respondent's license, and if applicable, motor vehicle registration and any number plates taken into custody, shall be returned, along with a certified statement that the administrative revocation proceedings have been terminated.

(h) The notice shall state that, if the administrative revocation is sustained at the hearing, a written decision shall be mailed to the respondent, or to the parent or guardian of the respondent if the respondent is under the age of eighteen, that shall contain, at a minimum, the following information:

(1) The effective date of the administrative revocation;

(2) The duration of the administrative revocation;

(3) If applicable, the date by which any outstanding motor vehicle number plates issued to the respondent must be surrendered to the director;

(4) If applicable, that failure to surrender any motor vehicle number plates as required is a misdemeanor;

(5) Other conditions that may be imposed by law; and

(6) The right to obtain judicial review.

(i) The notice shall state that failure of the respondent, or of the parent or guardian of the respondent if the respondent is under the age of eighteen, to attend a scheduled hearing shall cause the administrative revocation to take effect as provided in the administrative review decision.

### **§ 291E-35. Immediate restoration of license and motor vehicle registration**

(a) In cases involving an alcohol related offense, if a test conducted in accordance with part II and section 321-161 and the rules adopted thereunder shows that a respondent had an alcohol concentration less than .08, the director or the arresting law enforcement agency immediately shall return the respondent's license, and if applicable, motor vehicle registration and any number plates taken into custody, along with a certified statement that administrative revocation proceedings have been terminated with prejudice.

(b) In cases involving a drug related offense, if a test conducted in accordance with part II and section 321-161 and the rules adopted thereunder fails to show the presence, in the respondent's blood or urine, of any drug that is capable of impairing the respondent's ability to operate a vehicle in a careful and prudent manner, the director or the arresting law enforcement agency immediately shall return the respondent's license, and if applicable, motor vehicle registration and any number plates taken into custody, along with a certified statement that administrative revocation proceedings have been terminated with prejudice.

### **§ 291E-36. Documents required to be submitted for administrative review; sworn statements**

Section 291E-36 Documents required to be submitted for administrative review; sworn statements. (a) Whenever a respondent has been arrested for a violation of section 291E-61 or 291E-61.5 and submits to a test that establishes: the respondent's alcohol concentration was .08 or more; the presence, in the respondent's blood or urine, of any drug that is capable of impairing the respondent's ability to operate a vehicle in a careful and prudent manner; or whenever a respondent has been involved in a collision resulting in injury or death and a blood or urine test performed pursuant to section 291E-21 establishes that the respondent's alcohol concentration was .08 or more or establishes the presence in the respondent's blood or urine of any drug that is capable of impairing the respondent's ability to operate a vehicle in a careful and prudent manner, the following shall be forwarded immediately to the director:

(1) A copy of the arrest report or the report of the law enforcement officer who issued the notice of administrative revocation to the person involved in a collision resulting in injury or death and the sworn statement of the arresting law enforcement officer or the officer who issued the notice of administrative revocation, stating facts that establish that:

(A) There was reasonable suspicion to stop the vehicle, the vehicle was stopped at an intoxicant control roadblock established and operated in compliance with sections 291E-19 and 291E-20, or the respondent was tested pursuant to section 291E-21;

(B) There was probable cause to believe that the respondent had been operating the vehicle while under the influence of an intoxicant;

(C) The respondent was informed of:

(i) The sanctions of section 291E-41;

(ii) The possibility that criminal charges may be filed; and

(iii) The probable consequences of refusing to be tested for alcohol concentration or drug content; and

(D) The respondent agreed to be tested or the person was tested pursuant to section 291E-21;

(2) In a case involving an alcohol related offense, the sworn statement of the person responsible for maintenance of the

testing equipment, stating facts that establish that, pursuant to section 321-161 and rules adopted thereunder:

(A) The equipment used to conduct the test was approved for use as an alcohol testing device in this State;

(B) The person had been trained and at the time the test was conducted was certified and capable of maintaining the testing equipment; and

(C) The testing equipment used had been properly maintained and was in good working condition when the test was conducted;

(3) In a case involving an alcohol related offense, the sworn statement of the person who conducted the test, stating facts that establish that, pursuant to section 321-161 and rules adopted thereunder:

(A) The person was trained and at the time the test was conducted was certified and capable of operating the testing equipment;

(B) The person followed the procedures established for conducting the test;

(C) The equipment used to conduct the test functioned in accordance with operating procedures and indicated that the respondent's alcohol concentration was at, or above, the prohibited level; and

(D) The person whose breath or blood was tested is the respondent;

(4) In a case involving a drug related offense, the sworn statement of the person responsible for maintenance of the testing equipment, stating facts that establish that, pursuant to section 321-161 and rules adopted thereunder:

(A) The equipment used to conduct the test was approved for use in drug testing;

(B) The person conducting the test had been trained and, at the time of the test, was certified and capable of maintaining the testing equipment; and

(C) The testing equipment used had been properly maintained and was in good working condition when the test was conducted;

(5) In a case involving a drug related offense, the sworn statement of the person who conducted the test, stating facts that establish that, pursuant to section 321-161 and rules adopted thereunder:

(A) At the time the test was conducted, the person was trained and capable of operating the testing equipment;

(B) The person followed the procedures established for conducting the test;

(C) The equipment used to conduct the test functioned in accordance with operating procedures and indicated the presence of one or more drugs or their metabolites in the respondent's blood or urine; and

(D) The person whose blood or urine was tested is the respondent;

(6) A copy of the notice of administrative revocation issued by the law enforcement officer to the respondent;

(7) Any license, and motor vehicle registration and number plates if applicable, taken into possession by the law enforcement officer; and

(8) A listing of any prior alcohol or drug enforcement contacts involving the respondent.

(b) Whenever a respondent has been arrested for a violation of section 291E-61 or 291E-61.5 and refuses to submit to a test to determine alcohol concentration or drug content in the blood or urine, the following shall be forwarded immediately to the director:

(1) A copy of the arrest report and the sworn statement of the arresting law enforcement officer, stating facts that establish that:

(A) There was reasonable suspicion to stop the vehicle or the vehicle was stopped at an intoxicant control roadblock established and operated in compliance with sections 291E-19 and 291E-20;

(B) There was probable cause to believe that the respondent had been operating the vehicle while under the influence of an intoxicant;

(C) The respondent was informed of:

(i) The sanctions of section 291E-41;

(ii) The possibility that criminal charges may be filed; and

(iii) The probable consequences of refusing to be tested for alcohol concentration or drug content in the blood or urine; and

(D) The respondent refused to be tested;

(2) A copy of the notice of administrative revocation issued to the respondent;

(3) Any driver's license, and motor vehicle registration and number plates if applicable, taken into possession; and

(4) A listing of all alcohol and drug enforcement contacts involving the respondent.

**§ 291E-37. Administrative review; procedures; decision**

(a) The director automatically shall review the issuance of a notice of administrative revocation and shall issue a written decision administratively revoking the license and privilege to operate a vehicle, and motor vehicle registration if applicable, or rescinding the notice of administrative revocation. The written review decision shall be mailed to the respondent, or to the parent or guardian of the respondent if the respondent is under the age of eighteen, no later than:

(1) Eight days after the date the notice was issued in a case involving an alcohol related offense; or

(2) Twenty-two days after the date the notice was issued in a case involving a drug related offense.

(b) The respondent shall have the opportunity to demonstrate in writing why the respondent's license and privilege to operate a vehicle, and motor vehicle registration if applicable, should not be administratively revoked and, within three days of receiving the notice of administrative revocation, as provided in section 291E-33, shall submit any written information, either by mail or in person, to the director's office or to any office or address designated by the director for that purpose.

(c) In conducting the administrative review, the director shall consider:

(1) Any sworn or unsworn written statement or other written evidence provided by the respondent;

(2) The breath, blood, or urine test results, if any; and

(3) The sworn statement of any law enforcement officer or other person or other evidence or information required by section 291E-36.

(d) The director shall administratively revoke the respondent's license and privilege to operate a vehicle if the director determines that:

(1) There existed reasonable suspicion to stop the vehicle, the vehicle was stopped at an intoxicant control roadblock established and operated in compliance with sections 291E-19 and 291E-20, or the person was tested pursuant to section 291E-21;

(2) There existed probable cause to believe that the respondent operated the vehicle while under the influence of an intoxicant; and

(3) The evidence proves by a preponderance that:

(A) The respondent operated the vehicle while under the influence of an intoxicant; or

(B) The respondent operated the vehicle and refused to submit to a breath, blood, or urine test after being informed of the sanctions of this part.

(e) The director shall administratively revoke the registration of any vehicle owned or registered to the respondent and take custody of any number plates issued to the respondent if the director determines that the respondent is a repeat intoxicated driver and that:

(1) There existed reasonable suspicion to stop the vehicle, the vehicle was stopped at an intoxicant control roadblock established and operated in compliance with sections 291E-19 and 291E-20, or the person was tested pursuant to section 291E-21;

(2) There existed probable cause to believe that the respondent operated the vehicle while under the influence of an intoxicant; and

(3) The evidence proves by a preponderance that:

(A) The respondent operated the vehicle while under the influence of an intoxicant; or

(B) The respondent operated the vehicle and refused to submit to a breath, blood, or urine test after being informed of the sanctions of this part.

(f) If the evidence does not support administrative revocation, the director shall rescind the notice of administrative revocation and return the respondent's license, and if applicable, motor vehicle registration and any number plates taken into custody, along with a certified statement that administrative revocation proceedings have been terminated.

(g) If the director administratively revokes the respondent's license and privilege to operate a vehicle, and motor vehicle registration if applicable, the director shall mail a written review decision to the respondent, or to the parent or guardian of the respondent if the respondent is under the age of eighteen. The written review decision shall:

(1) State the reasons for the administrative revocation;

(2) Indicate that the respondent has six days from the date the decision is mailed to request an administrative hearing to review the director's decision;

(3) Explain the procedure by which to request an administrative hearing;

(4) Be accompanied by a form, postage prepaid, that the respondent may fill out and mail in order to request an administrative hearing;

(5) Inform the respondent of the right to review and copy all documents considered at the review, including the arrest report and the sworn statements of law enforcement officers or other persons, prior to the hearing; and

(6) State that the respondent may be represented by counsel at the hearing, submit evidence, give testimony, and present and cross-examine witnesses, including the arresting law enforcement officer.

(h) Failure of the respondent to request a hearing within the time provided in section 291E-38(a) shall cause the administrative revocation to take effect for the period and under the conditions provided in the administrative review decision issued by the director under this section. The respondent may regain the right to an administrative hearing by requesting the director, within sixty days of the issuance of the notice of administrative revocation as provided in section 291E-33, to schedule an administrative hearing. The administrative hearing shall be scheduled to commence no later than thirty days after the request is received by the director. The administrative review decision issued by the director under this section shall explain clearly the consequences of failure to request an administrative hearing and the procedure by which the respondent may regain the right to a hearing.

### **§ 291E-38. Administrative hearing; procedure; decision**

(a) If the director administratively revokes the respondent's license and privilege to operate a vehicle, and motor vehicle registration if applicable, after the administrative review, the respondent may request an administrative hearing to review the decision within six days of the date the administrative review decision is mailed. If the request for hearing is received by the director within six days of the date the decision is mailed, the hearing shall be scheduled to commence no later than:

(1) Twenty-five days from the date the notice of administrative revocation was issued in a case involving an alcohol related offense; or

(2) Thirty-nine days from the date the notice of administrative revocation was issued in a case involving a drug related offense.

The director may continue the hearing only as provided in subsection (k).

(b) The hearing shall be held at a place designated by the director, as close to the location where the notice of administrative revocation was issued as practical.

(c) The respondent may be represented by counsel and, if the respondent is under the age of eighteen, must be accompanied by a parent or guardian.

(d) The director shall conduct the hearing and have authority to:

(1) Administer oaths and affirmations;

(2) Examine witnesses and take testimony;

(3) Receive and determine the relevance of evidence;

(4) Issue subpoenas;

(5) Regulate the course and conduct of the hearing; and

(6) Make a final ruling.

(e) The director shall affirm the administrative revocation only if the director determines that:

(1) There existed reasonable suspicion to stop the vehicle, the vehicle was stopped at an intoxicant control roadblock established and operated in compliance with sections 291E-19 and 291E-20, or the person was tested pursuant to section 291E-21;

(2) There existed probable cause to believe that the respondent operated the vehicle while under the influence of an intoxicant; and

(3) The evidence proves by a preponderance that:

(A) The respondent operated the vehicle while under the influence of an intoxicant; or

(B) The respondent operated the vehicle and, after being informed of the sanctions of this part, refused to submit to a breath, blood, or urine test.

(f) In addition to subsection (e), the director shall affirm the administrative revocation of the registration of any motor vehicle owned by or registered to the respondent only if the director determines that the respondent is a repeat

intoxicated driver. If the director affirms the administrative revocation pursuant to this subsection, the director shall order the respondent to surrender the number plates and motor vehicle registration of any motor vehicle owned by or registered to the respondent. The director may destroy any number plates taken into custody.

(g) The respondent's prior alcohol and drug enforcement contacts shall be entered into evidence.

(h) The sworn statements provided in section 291E-36 shall be admitted into evidence. The director shall consider the sworn statements in the absence of the law enforcement officer or other person. Upon written notice to the director, no later than five days prior to the hearing, that the respondent wishes to examine a law enforcement officer or other person who made a sworn statement, the director shall issue a subpoena for the officer or other person to appear at the hearing. Personal service upon the law enforcement officer or other person who made a sworn statement shall be made no later than forty-eight hours prior to the hearing time. If the officer or other person cannot appear, the officer or other person at the discretion of the director, may testify by telephone.

(i) The hearing shall be recorded in a manner to be determined by the director.

(j) The director's decision shall be rendered in writing and mailed to the respondent, or to the parent or guardian of the respondent if the respondent is under the age of eighteen, no later than five days after the hearing is concluded. If the decision is to reverse the administrative revocation, the director shall return the respondent's license, and if applicable, motor vehicle registration and any number plates taken into custody, along with a certified statement that administrative revocation proceedings have been terminated. If the decision sustains the administrative revocation, the director shall mail to the respondent a written decision indicating the duration of the administrative revocation and any other conditions or restrictions as may be imposed pursuant to section 291E-41.

(k) For good cause shown, the director may grant a continuance either of the commencement of the hearing or of a hearing that has already commenced. If a continuance is granted at the request of the director, the director shall extend the validity of the temporary permit, and temporary motor vehicle registration and temporary number plates if applicable, unless otherwise prohibited, for a period not to exceed the period of the continuance. If a continuance is granted at the request of the respondent, the director shall not extend the validity of the temporary permit, or temporary motor vehicle registration and temporary number plates, if applicable. For purposes of this section, a continuance means a delay in the commencement of the hearing or an interruption of a hearing that has commenced, other than for recesses during the day or at the end of the day or week. The absence from the hearing of a law enforcement officer or other person, upon whom personal service of a subpoena has been made as set forth in subsection (h), constitutes good cause for a continuance.

(l) The director may grant a special motor vehicle registration, pursuant to section 291E-48, to a qualified household member or a co-owner of any motor vehicle upon determination that the person is completely dependent on the motor vehicle for the necessities of life. The special motor vehicle registration shall not be valid for use by the respondent.

(m) If the respondent fails to appear at the hearing, or if a respondent under the age of eighteen fails to appear with a parent or guardian, administrative revocation shall take effect for the period and under the conditions established by the director in the administrative review decision issued by the director under section 291E-37.

#### **§ 291E-40. Judicial review; procedure**

(a) If the director sustains the administrative revocation after an administrative hearing, the respondent, or parent or

guardian of an respondent under the age of eighteen, may file a petition for judicial review within thirty days after the administrative hearing decision is mailed. The petition shall be filed with the clerk of the district court in the district in which the incident occurred and shall be accompanied by the required filing fee for civil actions. The filing of the petition shall not operate as a stay of the administrative revocation, nor shall the court stay the administrative revocation pending the outcome of the judicial review. The petition shall be appropriately captioned. The petition shall state with specificity the grounds upon which the petitioner seeks reversal of the administrative revocation.

(b) The court shall schedule the judicial review as quickly as practicable, and the review shall be on the record of the administrative hearing without taking of additional testimony or evidence. If the petitioner fails to appear without just cause or, in the case of a petitioner under the age of eighteen, the petitioner fails to appear with a parent or guardian, the court shall affirm the administrative revocation.

(c) The sole issues before the court shall be whether the director:

- (1) Exceeded constitutional or statutory authority;
- (2) Erroneously interpreted the law;
- (3) Acted in an arbitrary or capricious manner;
- (4) Committed an abuse of discretion; or
- (5) Made a determination that was unsupported by the evidence in the record.

(d) The court shall not remand the matter back to the director for further proceedings consistent with its order.

#### **§ 291E-41. Effective date and period of administrative revocation; criteria**

(a) Unless an administrative revocation is reversed or the temporary permit, and temporary motor vehicle registration and temporary number plates if applicable, are extended by the director, administrative revocation shall become effective on the day specified in the notice of administrative revocation. Except as provided in section 291E-44, no license and privilege to operate a vehicle, nor motor vehicle registration and number plates if applicable, shall be restored under any circumstances, and no conditional license permit shall be issued during the administrative revocation period. Upon completion of the administrative revocation period, the respondent may reapply and be reissued a license pursuant to section 291E-45.

(b) The periods of administrative revocation with respect to a license and privilege to operate a vehicle, and motor vehicle registration if applicable, that shall be imposed under this part are as follows:

- (1) A minimum of three months up to a maximum of one year revocation of license and privilege to operate a vehicle, if the respondent's record shows no prior alcohol enforcement contact or drug enforcement contact during the five years preceding the date the notice of administrative revocation was issued;
- (2) A minimum of one year up to a maximum of two years revocation of license and privilege to operate a vehicle and of the registration of any motor vehicle registered to the respondent, if the respondent's record shows one prior alcohol enforcement contact or drug enforcement contact during the five years preceding the date the notice of administrative

revocation was issued;

(3) A minimum of two years up to a maximum of four years revocation of license and privilege to operate a vehicle and of the registration of any motor vehicle registered to the respondent, if the respondent's record shows two prior alcohol enforcement contacts or drug enforcement contacts during the seven years preceding the date the notice of administrative revocation was issued;

(4) Lifetime revocation of license and privilege to operate a vehicle and of the registration of any motor vehicle registered to the respondent and a lifetime prohibition on any subsequent registration of motor vehicles by the respondent, if the respondent's record shows three or more prior alcohol enforcement contacts or drug enforcement contacts during the ten years preceding the date the notice of administrative revocation was issued; or

(5) For respondents under the age of eighteen years who were arrested for a violation of section 291E-61 or 291E-61.5, revocation of license and privilege to operate a vehicle either for the period remaining until the respondent's eighteenth birthday or, if applicable, for the appropriate revocation period provided in paragraphs (1) to (4) or in subsection (d), whichever is longer and such respondents shall not qualify for a conditional permit; provided that when more than one administrative revocation, suspension, or conviction arises out of the same arrest, it shall be counted as only one prior alcohol enforcement contact or drug enforcement contact, whichever revocation, suspension, or conviction occurs later.

(c) Whenever a motor vehicle registration is revoked under this part, the director shall cause the revocation to be entered electronically into the motor vehicle registration file of the respondent.

(d) If a respondent has refused to be tested after being informed of the sanctions of this part, the revocation imposed under subsection (b)(1), (2), (3), and (4) shall be for a period of one year, two years, four years, and a lifetime, respectively.

(e) In addition to subsection (d), any motor vehicle registration of an respondent who is a repeat intoxicated driver and who refused to be tested after being informed of the sanctions of this part shall be revoked for the periods specified in subsection (d), and the respondent shall be prohibited from subsequently registering any motor vehicle for the applicable revocation period.

(f) Whenever a license and privilege to operate a vehicle is administratively revoked under this part, the respondent shall be referred to the driver's education program for an assessment, by a certified substance abuse counselor, of the respondent's substance abuse or dependence and the need for treatment. The counselor shall submit a report with recommendations to the director. If the counselor's assessment establishes that the extent of the respondent's substance abuse or dependence warrants treatment, the director shall so order. All costs for assessment and treatment shall be paid by the respondent.

(g) Alcohol and drug enforcement contacts that occurred prior to January 1, 2002, shall be counted in determining the administrative revocation period.

(h) The requirement to provide proof of financial responsibility pursuant to section 287-20 shall not be based upon a revocation under subsection (b)(1).

### § 291E-44. Conditional license permits

"(a) (1) During the administrative hearing, the director, at the request of a respondent who is subject to administrative revocation for a period as provided in section 291E-41(b)(1), may issue a conditional license permit that will allow the respondent, after a minimum period of absolute license revocation of thirty days, to drive for the remainder of the revocation period; provided that one or more of the following conditions are met:

(A) The respondent is gainfully employed in a position that requires driving and will be discharged if the respondent's driving privileges are administratively revoked; or

(B) The respondent has no access to alternative transportation and therefore must drive to work or to a substance abuse treatment facility or counselor for treatment ordered by the director under section 291E-41 [D> . <D] [A> ; <A]

or

(2) Notwithstanding any other law to the contrary, the director shall not issue a conditional license permit to:

(A) A respondent whose license, during the conditional license permit period, is expired or is suspended or revoked as a result of action other than the instant revocation for which the respondent is requesting a conditional license permit under this section; [D> or <D]

(B) A respondent who has refused breath, blood, or urine tests for purposes of determining alcohol concentration or drug content of the person's breath, blood, or urine, as applicable or

(C) a respondent who holds either a Category 4 license under Section 286-102(B) or a commercial driver's license under section 286-239(B).

(b) A request made pursuant to subsection (a)(1) shall be accompanied by:

(1) A sworn statement from the respondent containing facts establishing that the respondent currently is employed in a position that requires driving and that the respondent will be discharged if not allowed to drive; and

(2) A sworn statement from the respondent's employer establishing that the employer will, in fact, discharge the respondent if the respondent is prohibited from driving.

(c) A request made pursuant to subsection (a)(2) shall be accompanied by a sworn statement by the respondent attesting to the specific facts upon which the request is based, which statement shall be verified by the director.

(d) A conditional license permit may include restrictions allowing the respondent to drive:

(1) Only during hours of employment for activities solely within the scope of the employment;

(2) Only during daylight hours; or

(3) Only for specified purposes or to specified destinations.

In addition, the director may impose any other appropriate restrictions.

(e) The duration of the conditional license permit shall be determined on the basis of the criteria set forth in subsections (b) and (c).

(f) If the respondent violates the conditions imposed under this section, the conditional license permit shall be rescinded, and administrative revocation shall be immediate for the appropriate period authorized by law.

#### **§ 291E-45. Eligibility for relicensing and reregistration of motor vehicle**

(a) To be eligible for relicensing or renewing the privilege to operate a vessel after a period of administrative revocation has expired, the person shall:

(1) Submit proof to the director of compliance with all conditions imposed by the director;

(2) Obtain a certified statement from the director indicating eligibility for relicensing and for renewing the privilege to operate a vessel;

(3) Present the certified statement to the appropriate licensing official or to the department of land and natural resources, as applicable; and

(4) Successfully complete each requirement, including payment of all applicable fees, for:

(A) Obtaining a new license in this State, pursuant to chapter 286; or

(B) Renewing the privilege to operate a vessel, as may be provided in chapter 200 or rules adopted by the department of land and natural resources pursuant to section 200-24.

(b) To be eligible for reregistration of a motor vehicle, if applicable, after a period of administrative revocation has expired, the person shall:

(1) Submit proof to the director of compliance with all conditions imposed by the director;

(2) Obtain a certified statement from the director indicating eligibility for registration of a motor vehicle;

(3) Present the certified statement to the appropriate county director of finance; and

(4) Successfully complete each requirement, as provided in chapter 286, for obtaining a new certificate of registration for a motor vehicle in this State, including payment of all applicable fees.

#### **§ 291E-48. Special motor vehicle registration**

(a) Anytime after the effective date of revocation or after the administrative hearing decision is mailed pursuant to section 291E-38(j), a qualified household member or co-owner of a motor vehicle with a respondent who has had a motor vehicle registration revoked under this part may submit a sworn statement to the director requesting a special motor

vehicle registration. The director may grant the request upon determining that the following conditions have been met:

- (1) The applicant is a household member of the respondent's or a co-owner of the vehicle;
- (2) The applicant has a license that has not expired or been suspended or revoked;
- (3) The applicant is completely dependent on the motor vehicle for the necessities of life; and
- (4) The director finds that the applicant will take reasonable precautions to ensure that the respondent will not drive the vehicle.

A person to whom a special motor vehicle registration has been granted shall apply to the appropriate county director of finance for special series number plates, as provided in section 249-9.4.

- (b) The director shall revoke the special motor vehicle registration if any one of the conditions set forth in the application no longer exist.
- (c) The applicant shall be under an affirmative duty to report to the director any changes in the conditions to the special motor vehicle registration.
- (d) The director shall adopt rules, pursuant to chapter 91, necessary to carry out the purposes of this section.

#### **§ 291E-61. Operating a vehicle under the influence of an intoxicant**

(a) A person commits the offense of operating a vehicle under the influence of an intoxicant if the person operates or assumes actual physical control of a vehicle:

- (1) While under the influence of alcohol in an amount sufficient to impair the person's normal mental faculties or ability to care for the person and guard against casualty;
- (2) While under the influence of any drug that impairs the person's ability to operate the vehicle in a careful and prudent manner;
- (3) With .08 or more grams of alcohol per two hundred ten liters of breath; or
- (4) With .08 or more grams of alcohol per one hundred milliliters or cubic centimeters of blood.

(b) A person committing the offense of operating a vehicle under the influence of an intoxicant shall be sentenced as follows without possibility of probation or suspension of sentence:

(1) For the first offense, or any offense not preceded within a five-year period by a conviction for an offense under this section or section 291E-4(a):

(A) A fourteen-hour minimum substance abuse rehabilitation program, including education and counseling, or other comparable program deemed appropriate by the court;

(B) Ninety-day prompt suspension of license and privilege to operate a vehicle during the suspension period, or the

court may impose, in lieu of the ninety-day prompt suspension of license, a minimum thirty-day prompt suspension of license with absolute prohibition from operating a vehicle and, for the remainder of the ninety-day period, a restriction on the license that allows the person to drive for limited work-related purposes and to participate in substance abuse treatment programs;

(C) Any one or more of the following:

(i) Seventy-two hours of community service work;

(ii) Not less than forty-eight hours and not more than five days of imprisonment; or

(iii) A fine of not less than \$ 150 but not more than \$ 1,000; and

(D) A surcharge of \$ 25 to be deposited into the neurotrauma special fund;

(2) For an offense that occurs within five years of a prior conviction for an offense under this section or section 291E-4(a) by:

(A) Prompt suspension of license and privilege to operate a vehicle for a period of one year with an absolute prohibition from operating a vehicle during the suspension period;

(B) Either one of the following:

(i) Not less than two hundred forty hours of community service work; or

(ii) Not less than five days but not more than fourteen days of imprisonment of which at least forty-eight hours shall be served consecutively;

(C) A fine of not less than \$ 500 but not more than \$ 1,500; and

(D) A surcharge of \$ 25 to be deposited into the neurotrauma special fund;

(3) For an offense that occurs within five years of two prior convictions for offenses under this section or section 291E-4(a):

(A) A fine of not less than \$ 500 but not more than \$ 2,500;

(B) Revocation of license and privilege to operate a vehicle for a period not less than one year but not more than five years;

(C) Not less than ten days but not more than thirty days imprisonment of which at least forty-eight hours shall be served consecutively; and

(D) A surcharge of \$ 25 to be deposited into the neurotrauma special fund; and

(4) Any person eighteen years of age or older who is convicted under this section and who operated a vehicle with a

passenger, in or on the vehicle, who was younger than fifteen years of age, shall be sentenced to an additional mandatory fine of \$ 500 and an additional mandatory term of imprisonment of forty-eight hours; provided that the total term of imprisonment for a person convicted under this paragraph and paragraph (1), (2), or (3) shall not exceed thirty days.

"(c) Notwithstanding any other law to the contrary, any:

(1) Conviction under this section, section 291E-4(a), or section 291E-61.5;

(2) Conviction in any other state or federal jurisdiction for an offense that is comparable to operating or being in physical control of a vehicle while having either an unlawful alcohol concentration or an unlawful drug content in the blood or urine or while under the influence of an intoxicant or habitually operating a vehicle under the influence of an intoxicant; or

(3) Adjudication of a minor for a law violation that, if committed by an adult, would constitute a violation of this section or an offense under section 291E-4(a), or section 291E-61.5; shall be considered a prior conviction for the purposes of imposing sentence under this section. Any judgment on a verdict or a finding of guilty, a plea of guilty or nolo contendere, or an adjudication in the case of a minor, that at the time of the offense has not been expunged by pardon, reversed, or set aside shall be deemed a prior conviction under this section. No license and privilege suspension or revocation shall be imposed pursuant to this section if the person's license and privilege to operate a vehicle has previously been administratively revoked pursuant to part III for the same act; provided that, if the administrative suspension or revocation is subsequently reversed, the person's license and privilege to operate a vehicle shall be suspended or revoked as provided in this section."

(d) Whenever a court sentences a person pursuant to subsection (b), it also shall require that the offender be referred to the driver's education program for an assessment, by a certified substance abuse counselor, of the offender's substance abuse or dependence and the need for appropriate treatment. The counselor shall submit a report with recommendations to the court. The court shall require the offender to obtain appropriate treatment if the counselor's assessment establishes the offender's substance abuse or dependence. All costs for assessment and treatment shall be borne by the offender.

(e) Notwithstanding any other law to the contrary, whenever a court revokes a person's driver's license pursuant to this section, the examiner of drivers shall not grant to the person a new driver's license until the expiration of the period of revocation determined by the court. After the period of revocation is completed, the person may apply for and the examiner of drivers may grant to the person a new driver's license.

(f) Any person sentenced under this section may be ordered to reimburse the county for the cost of any blood or urine tests conducted pursuant to section 291E-11. The court shall order the person to make restitution in a lump sum, or in a series of prorated installments, to the police department or other agency incurring the expense of the blood or urine test.

(g) The requirement to provide proof of financial responsibility pursuant to section 287-20 shall not be based upon a sentence imposed under subsection (b)(1).

(h) As used in this section, the term "examiner of drivers" has the same meaning as provided in section 286-2.

**Section 291E-61.5 Habitually operating a vehicle under the influence of an intoxicant.**

(a) A person commits the offense of habitually operating a vehicle under the influence of an intoxicant if:

(1) The person is a habitual operator of a vehicle while under the influence of an intoxicant; and

(2) The person operates or assumes actual physical control of a vehicle:

(A) While under the influence of alcohol in an amount sufficient to impair the person's normal mental faculties or ability to care for the person and guard against casualty;

(B) While under the influence of any drug that impairs the person's ability to operate the vehicle in a careful and prudent manner;

(C) With .08 or more grams of alcohol per two hundred ten liters of breath; or

(D) With .08 or more grams of alcohol per one hundred milliliters or cubic centimeters of blood.

(b) For the purposes of this section:

"Convicted three or more times for offenses of operating a vehicle under the influence" means that, at the time of the behavior for which the person is charged under this section, the person had three or more times within ten years of the instant offense:

(1) A judgment on a verdict or a finding of guilty, or a plea of guilty or nolo contendere, for a violation of this section or section 291-4, 291-4.4, or 291-7 as those sections were in effect on December 31, 2001, or section 291E-61 or 707-702.5;

(2) A judgment on a verdict or a finding of guilty, or a plea of guilty or nolo contendere, for an offense that is comparable to this section or section 291-4, 291-4.4, or 291-7 as those sections were in effect on December 31, 2001, or section 291E-61 or 707-702.5; or

(3) An adjudication of a minor for a law or probation violation that, if committed by an adult, would constitute a violation of this section or section 291-4, 291-4.4, or 291-7 as those sections were in effect on December 31, 2001, or section 291E-61 or 707-702.5; that, at the time of the instant offense, had not been expunged by pardon, reversed, or set aside. All convictions that have been expunged by pardon, reversed, or set aside prior to the instant offense shall not be deemed prior convictions for the purposes of proving the person's status as a habitual operator of a vehicle while under the influence of an intoxicant.

A person has the status of a "habitual operator of a vehicle while under the influence of an intoxicant" if the person has been convicted three or more times within ten years of the instant offense, for offenses of operating a vehicle under the influence of an intoxicant.

(c) Habitually operating a vehicle while under the influence of an intoxicant is a class C felony.

(d) For a conviction under this section, the sentence shall be either:

(1) An indeterminate term of imprisonment of five years; or

(2) A term of probation of five years, with conditions to include:

(A) Mandatory revocation of license and privilege to operate a vehicle for a period not less than one year but not more than five years;

(B) Not less than ten days imprisonment, of which at least forty-eight hours shall be served consecutively;

(C) Referral to a certified substance abuse counselor as provided in section 291E-61(d); and

(D) A surcharge of \$ 25 to be deposited into the neurotrauma special fund.

(E) Whenever a court sentences a person under this section, it shall also require that the offender be referred to the driver's education program for an assessment, by a certified substance abuse counselor, of the offender's substance abuse or dependence and the need for appropriate treatment. The counselor shall submit a report with recommendations to the court. The court shall require the offender to obtain appropriate treatment if the counselor's assessment establishes the offender's substance abuse or dependence. All costs for assessment and treatment shall be borne by the offender.

(F) Notwithstanding any other law to the contrary, whenever a court revokes a person's driver's license pursuant to this section, the examiner of drivers shall not grant to the person a new driver's license until expiration of the period of revocation determined by the court. After the period of revocation is complete, the person may apply for and the examiner of drivers may grant to the person a new driver's license.

(G) Any person sentenced under this section may be ordered to reimburse the county for the cost of any blood or urine tests conducted pursuant to section 291e-11. The court shall order the person to make restitution in a lump sum, or in a series of prorated installments, to the police department or other agency incurring the expense of the blood or urine test.

(H) As used in this section, the term "examiner of drivers" has the same meaning as provided in section 286-2.

**§ 291E-62. Operating a vehicle after license and privilege have been suspended or revoked for operating a vehicle under the influence of an intoxicant; penalties**

(a) No person whose license and privilege to operate a vehicle have been revoked, suspended, or otherwise restricted pursuant to part III or section 291E-61 or 291E-61.5, or to part VII or part XIV of chapter 286 or section 200-81, 291-4, 291-4.4, 291-4.5, or 291-7 as those provisions were in effect on December 31, 2001, shall operate or assume actual physical control of any vehicle:

(1) In violation of any restrictions placed on the person's license; or

(2) While the person's license or privilege to operate a vehicle remains suspended or revoked.

(b) Any person convicted of violating this section shall be sentenced as follows:

(1) For a first offense, or any offense not preceded within a five-year period by conviction for an offense under this section:

(A) A term of imprisonment of not less than three consecutive days but not more than thirty days;

(B) A fine of not less than \$ 250 but not more than \$ 1,000; and

(C) Revocation of license and privilege to operate a vehicle for an additional year;

(2) For an offense that occurs within five years of a prior conviction for an offense under this section:

(A) Thirty days imprisonment;

(B) A \$ 1,000 fine; and

(C) Revocation of license and privilege to operate a vehicle for an additional two years; and

(3) For an offense that occurs within five years of two or more prior convictions for offenses under this section:

(A) One year imprisonment;

(B) A \$ 2,000 fine; and

(C) Permanent revocation of the person's license and privilege to operate a vehicle.

The period of revocation shall commence upon the release of the person from the period of imprisonment imposed pursuant to this section.

**§ 291E-64. Operating a vehicle after consuming a measurable amount of alcohol; persons under the age of twenty-one**

(a) It shall be unlawful for any person under the age of twenty-one years to operate any vehicle with a measurable amount of alcohol. A law enforcement officer may arrest a person under this section when the officer has probable cause to believe the arrested person is under the age of twenty-one and had been operating a vehicle upon a public way, street, road, or highway or on or in the waters of the State with a measurable amount of alcohol.

(b) A person who violates this section shall be sentenced as follows:

(1) For a first violation or any violation not preceded within a five-year period by a prior alcohol enforcement contact:

(A) The court shall impose:

(i) A requirement that the person and, if the person is under the age of eighteen, the person's parent or guardian attend an alcohol abuse education and counseling program for not more than ten hours; and

(ii) A one hundred eighty-day prompt suspension of license and privilege to operate a vehicle with absolute prohibition from operating a vehicle during the suspension period, or in the case of a person eighteen years of age or older, the court may impose, in lieu of the one hundred eighty-day prompt suspension of license, a minimum thirty-day prompt suspension of license with absolute prohibition from operating a vehicle and, for the remainder of the one hundred eighty-day period, a restriction on the license that allows the person to drive for limited work-related purposes and to participate in alcohol abuse education and treatment programs; and

(B) In addition, the court may impose any one or more of the following:

(i) Not more than thirty-six hours of community service work; or

(ii) A fine of not less than \$ 150 but not more than \$ 500.

(2) For a violation that occurs within five years of a prior alcohol enforcement contact:

(A) The court shall impose prompt suspension of license and privilege to operate a vehicle for a period of one year with absolute prohibition from operating a vehicle during the suspension period; and

(B) In addition, the court may impose any of the following:

(i) Not more than fifty hours of community service work; or

(ii) A fine of not less than \$ 300 but not more than \$ 1,000.

(3) For a violation that occurs within five years of two prior alcohol enforcement contacts:

(A) The court shall impose revocation of license and privilege to operate a vehicle for a period of two years; and

(B) In addition, the court may impose any of the following:

(i) Not more than one hundred hours of community service work; or

(ii) A fine of not less than \$ 300 but not more than \$ 1,000.

(c) Notwithstanding any other law to the contrary, any conviction or plea under this section shall be considered a prior alcohol enforcement contact.

(d) Whenever a court sentences a person pursuant to subsection (b)(2) or (3), it also shall require that the person be referred to the driver's education program for an assessment, by a certified substance abuse counselor, of the person's alcohol abuse or dependence and the need for appropriate treatment. The counselor shall submit a report with recommendations to the court. The court shall require the person to obtain appropriate treatment if the counselor's assessment establishes the person's alcohol abuse or dependence. All costs for assessment and treatment shall be borne by the person or by the person's parent or guardian, if the person is under the age of eighteen.

(e) Notwithstanding section 831-3.2 or any other law to the contrary, a person convicted of a first-time violation under subsection (b)(1), who had no prior alcohol enforcement contacts, may apply to the court for an expungement order upon attaining the age of twenty-one, or thereafter, if the person has fulfilled the terms of the sentence imposed by the court and has had no subsequent alcohol or drug related enforcement contacts.

(f) Notwithstanding any other law to the contrary, whenever a court revokes a person's driver's license pursuant to this section, the examiner of drivers shall not grant to the person an application for a new driver's license for a period to be determined by the court.

(g) Any person sentenced under this section may be ordered to reimburse the county for the cost of any blood tests conducted pursuant to section 291E-11. The court shall order the person to make restitution in a lump sum, or in a series of prorated installments, to the police department or other agency incurring the expense of the blood test.

(h) The requirement to provide proof of financial responsibility pursuant to section 287-20 shall not be based upon a sentence imposed under subsection (b)(1).

(i) Any person who violates this section shall be guilty of a violation.

(j) As used in this section, the terms "driver's license" and "examiner of drivers" have the same meanings as provided in section 286-2.

**§ 291E-65. Refusal to submit to testing for measurable amount of alcohol; district court hearing; sanctions; appeals; admissibility**

(a) If a person under arrest for operating a vehicle after consuming a measurable amount of alcohol, pursuant to section 291E-64, refuses to submit to a breath or blood test, none shall be given, except as provided in section 291E-21, but the arresting law enforcement officer, as soon as practicable, shall submit an affidavit to a district judge of the circuit in which the arrest was made, stating:

(1) That at the time of the arrest, the arresting officer had probable cause to believe the arrested person was under the age of twenty-one and had been operating a vehicle upon a public way, street, road, or highway or on or in the waters of the State with a measurable amount of alcohol;

(2) That the arrested person had been informed of the sanctions of this section; and

(3) That the person had refused to submit to a breath or blood test.

(b) Upon receipt of the affidavit, the district judge shall hold a hearing within twenty days. The district judge shall hear and determine:

(1) Whether the arresting law enforcement officer had probable cause to believe that the person was under the age of twenty-one and had been operating a vehicle upon a public way, street, road, or highway or on or in the waters of the State with a measurable amount of alcohol;

(2) Whether the person was lawfully arrested;

- (3) Whether the arresting officer had informed the person of the sanctions of this section; and
  - (4) Whether the person refused to submit to a test of the person's breath or blood.
- (c) If the district judge finds the statements contained in the affidavit are true, the judge shall suspend the arrested person's license and privilege to operate a vehicle as follows:
- (1) For a first suspension, or any suspension not preceded within a five-year period by a suspension under this section, for a period of twelve months; and
  - (2) For any subsequent suspension under this section, for a period not less than two years and not more than five years.
- (d) An order of a district court issued under this section may be appealed to the supreme court.
- (e) If a legally arrested person under the age of twenty-one refuses to submit to a test of the person's breath or blood, proof of refusal shall be admissible only in a hearing under this section or part III and shall not be admissible in any other action or proceeding, whether civil or criminal.