

State DUI Laws: Rhode Island

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: Yes

Felony Conviction for Repeat Offenses: Yes

Rhode Island General Laws

§ 31-11-6. Offenses resulting in mandatory revocation of license

The license of any chauffeur or operator shall be immediately revoked upon receipt by the division of motor vehicles of a record of the operator's or chauffeur's final conviction for any of the following offenses and the term of revocation shall be for the periods enumerated:

- (1) Manslaughter resulting from the operation of a motor vehicle, or operating so as to endanger resulting in death, three (3) years;
- (2) Driving a motor vehicle while under the influence of a narcotic drug as defined in chapter 28 of title 21, which renders him or her incapable of safely driving a motor vehicle, one year;
- (3) Driving a motor vehicle while under the influence of intoxicating liquor, the period of time, if any, as may be ordered in the final sentence imposed by a court having jurisdiction to impose the sentence;
- (4) Any felony in the commission of which a motor vehicle is used, eighteen (18) months;
- (5) Failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another, two (2) years;
- (6) Perjury or the making of a false affidavit or statement under oath to the division of motor vehicles under any other law relating to the ownership or operation of motor vehicles, two (2) years;
- (7) Conviction, or forfeiture of bail not vacated, upon three (3) charges of reckless driving committed within a period of twelve (12) months, three (3) years;
- (8) Conviction of altered or fraudulent license used to purchase or attempt to purchase alcoholic beverages, three (3) months.

§ 31-11-7. Authority of division of motor vehicles to suspend license

- (a) (1) The division of motor vehicles is authorized to suspend the license of an operator or chauffeur without

preliminary hearing upon a showing by its records or other sufficient evidence that the licensee:

(i) Has been adjudicated by a court of competent jurisdiction to have:

(A) Committed an offense for which mandatory revocation or suspension of license is required upon conviction or adjudication;

(B) Committed with such frequency of offenses against traffic regulations governing the movement of vehicles as to indicate a disrespect for traffic laws and a disregard for the safety of other persons on the highways;

(C) Been a reckless or negligent driver of a motor vehicle;

(D) Permitted an unlawful or fraudulent use of a license;

(E) Committed an offense in another state which, if committed in this state, would be grounds for suspension or revocation;

(F) Committed any offense enumerated in § 31-9-1;

(ii) Is the subject of an order issued pursuant to § 14-1-67; or

(iii) Poses an imminent safety risk to the general public as determined by the application of objectively ascertainable standards.

(2) Except for paragraph (1)(ii) of this subsection, the suspension shall be for any length of time, not exceeding one year, that the division of motor vehicles shall determine is necessary in order to protect public safety based upon its findings of the circumstances under which the offense was committed, the likelihood of recurrence, and the deterrent effect that might reasonably be expected to result from the hardship a suspension or prospective suspension would entail. Any license suspended pursuant to paragraph (1)(ii) of this subsection shall be for the length of time set forth in the court order.

(b) Upon suspending the license of any person as authorized by subsection (a) of this section, the division of motor vehicles shall immediately notify the licensee in writing of the factual and legal basis for the suspension, the procedure for requesting a hearing, and the rights afforded the individual pursuant to subsections (d) -- (f) of this section. When physical or mental fitness is the basis for the suspension determination, the notice shall reference the specific functional standard promulgated pursuant to § 31-10-44(b), which was relied upon by the division of motor vehicles. Upon his or her request the division of motor vehicles shall afford the licensee an opportunity for a hearing as early as practical and no later than twenty (20) days after receipt of the request.

(c) Except as authorized in subsection (a) of this section, whenever the division of motor vehicles proposes to suspend the license of any person, the division of motor vehicles shall afford a hearing to the licensee prior to suspending the person's license. When a licensee requests a hearing, no action to suspend his or her license shall be taken until a hearing decision has been rendered in accordance with subsections (d) -- (f) of this section. The division of motor vehicles shall notify the licensee in writing of the factual and legal basis for the proposed suspension, the procedure for requesting a hearing, and the rights afforded the individual pursuant to subsections (d) -- (f) of this section. When physical or mental fitness is the basis for the suspension recommendation, the notice shall reference the specific

functional standard promulgated pursuant to § 31-10-44(b), which was relied upon by the division of motor vehicles.

(d) The division of motor vehicles shall ensure that the hearing procedures afforded pursuant to subsection (b) and (c) of this section provide for: (1) an in person hearing before an impartial decision-maker; (2) the opportunity to compel the production of documents and witnesses, including members of the division of motor vehicles 's Medical Advisory Board; (3) the opportunity to confront and cross-examine witnesses; (4) access to all of the evidence upon which the division of motor vehicles relied in making its determination to suspend; and (5) the right to present any and all relevant evidence including the right to obtain and present the results of a recently administered road test. During any hearing, the division of motor vehicles shall bear the burden of proof as to the existence of the grounds for the suspension. The division of motor vehicles shall further ensure that during a hearing to determine the physical or mental fitness of a licensee, proof of the lack of physical or mental fitness shall be by clear and convincing evidence. The presumption of inability to operate a motor vehicle with safety established by the functional standards promulgated pursuant to § 31-10-44(b), shall be rebuttable by evidence that notwithstanding an individual's functional limitation, he or she is able to safely operate a motor vehicle.

(e) For the purpose of the hearing procedures described in subsection (d) of this section, the administrator of the division of motor vehicles or his or her duly authorized agent may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers, and may require a reexamination of the licensee.

(f) After the hearing conducted pursuant to subsection (d) of this section, the division of motor vehicles shall issue a written decision based solely on the evidence adduced at the hearing and containing the legal and factual basis for the determination. The division of motor vehicles may either rescind its order of suspension, determine suspension is not warranted; may continue, modify, or extend the suspension of the license; or may revoke the license.

§ 31-11-15. Appeal from administrator's order

Any person aggrieved by any order of the administrator of the division of motor vehicles may appeal that order to the sixth division of the district court by filing, within ten (10) days from the date of the notice to that person of the issuance of the order, a petition in that court stating the grounds upon which the appeal is taken. Upon the filing of the petition and tendering a twenty-five dollar (\$ 25.00) filing fee, the court shall cause thirty (30) days' notice of the pendency of the hearing to be given to the division of motor vehicles by serving the administrator of the division of motor vehicles, in the manner in which subpoenas in equity are served, with a certified copy of the petition. The petition shall follow the course of equity so far as it is applicable. Upon hearing this petition the court may review the evidence taken at a hearing, investigator's reports, or other information upon which the administrator's action was taken, and may in its discretion, affirm, or overrule or modify the order of the administrator of the division of motor vehicles. However, the taking of the appeal shall not operate as a stay of the order of the administrator of the division of motor vehicles from which the appeal is taken, and the order shall remain in full force and effect during the pendency of the appeal. A party aggrieved by a final order of the court may seek appellate review of the order pursuant to the procedures set forth in § 42-35-16.

§ 31-11-18.1. Driving after denial, revocation, or suspension for certain violations

(a) Any person who drives a motor vehicle on any highway of this state after his or her application for a license has been refused, or at a time when his or her license to operate is suspended, revoked, or cancelled, for: (1) operating under the influence of a narcotic drug or intoxicating liquor; (2) refusing to submit to a chemical test; reckless driving; (3) manslaughter from the operation of a motor vehicle or operating so as to endanger resulting in death; or (4) three (3) moving violations within a one-year period; shall be guilty of a misdemeanor for the first and second offenses and shall

be deemed guilty of a felony for the third or subsequent offenses.

(b) The division of motor vehicles upon receiving a record of the conviction of any person upon a charge of driving a motor vehicle while the license of the person was suspended, for reasons set forth in this section shall suspend the person's license or deny the person's application for any length of time that it shall deem proper but in no case less than an additional three (3) months. Upon receiving a record of conviction of a second violation of driving a motor vehicle while the license of that person was suspended for reasons set forth in this section, the division of motor vehicles shall suspend the person's license or deny the person's application for any length of time that it shall deem proper but in no case less than an additional six (6) months. Any subsequent conviction shall result in license revocation. Upon receiving a record of the conviction of any person upon a charge of driving after his or her application for a license had been refused, or after his or her license had been revoked or cancelled for reasons set forth in this section, the division of motor vehicles shall not issue a new license for an additional period of one year from and after the date the person would otherwise have been entitled to apply for a new license.

(c) (1) Upon a first conviction under this section a mandatory fine of five hundred dollars (\$ 500) shall be imposed, and if the person was driving after his or her application for a license had been refused, or at a time when his or her license to operate was suspended, revoked, or cancelled for operating under the influence of a controlled substance or intoxicating liquor, or his or her refusal to submit to a chemical test, reckless driving, manslaughter from the operation of a motor vehicle, or operation so as to endanger, death resulting, the person shall be imprisoned for a minimum of ten (10) days.

(2) A mandatory fine of five hundred dollars (\$ 500) for a second conviction under this section within a five (5) year period shall be imposed, and if the person was driving after his or her application for a license had been refused, or at a time when his or her license to operate was suspended, revoked, or cancelled for operating under the influence of a controlled substance or intoxicating liquor or his or her refusal to submit to a chemical test, reckless driving, manslaughter from the operation of a motor vehicle, or operation so as to endanger, death resulting, the person shall be imprisoned for a minimum of six (6) months to one year.

(3) For any subsequent conviction within a five (5) year period, a fine of one thousand dollars (\$ 1,000) shall be imposed and the person may be imprisoned for up to one year or be required to participate in a public service program designated and approved by the court. If the person was driving after his or her application for a license had been refused or at a time when his or her license to operate was suspended, revoked, or cancelled for: (i) operating under the influence of a controlled substance or intoxicating liquor; (ii) his or her refusal to submit to a chemical test; (iii) reckless driving; (iv) manslaughter from the operation of a motor vehicle; or (v) operating so as to endanger, death resulting; the person shall be imprisoned for a minimum of one year. Jurisdiction for violations of this section is given to the district court and the court shall have full authority to impose any sentence authorized for violations of this section.

(d) No fines, suspensions, or jail provided for under this section can be suspended.

§ 31-27-2. Driving under influence of liquor or drugs

(a) Whoever drives or otherwise operates any vehicle in the state while under the influence of any intoxicating liquor, drugs, toluene, or any controlled substance as defined in chapter 28 of title 21, or any combination of these, shall be guilty of a misdemeanor except as provided in subdivision (d)(3) and shall be punished as provided in subsection (d) of this section.

(b) (1) Any person charged under subsection (a) of this section whose blood alcohol concentration is eight one-

hundredths of one percent (.08%) or more by weight as shown by a chemical analysis of a blood, breath, or urine sample shall be guilty of violating subsection (a) of this section. This provision shall not preclude a conviction based on other admissible evidence. Proof of guilt under this section may also be based on evidence that the person charged was under the influence of intoxicating liquor, drugs, toluene, or any controlled substance defined in chapter 28 of title 21, or any combination of these, to a degree which rendered the person incapable of safely operating a vehicle. The fact that any person charged with violating this section is or has been legally entitled to use alcohol or a drug shall not constitute a defense against any charge of violating this section.

(2) Whoever drives or otherwise operates any vehicle in the state with a blood presence of any scheduled controlled substance as defined within chapter 28 of title 21, as shown by analysis of a blood or urine sample, shall be guilty of a misdemeanor and shall be punished as provided in subsection (d) of this section.

(c) In any criminal prosecution for a violation of subsection (a) of this section, evidence as to the amount of intoxicating liquor, toluene, or any controlled substance as defined in chapter 28 of title 21, or any combination of these, in the defendant's blood at the time alleged as shown by a chemical analysis of the defendant's breath, blood, or urine or other bodily substance shall be admissible and competent, provided that evidence is presented that the following conditions have been complied with:

(1) The defendant has consented to the taking of the test upon which the analysis is made. Evidence that the defendant had refused to submit to the test shall not be admissible unless the defendant elects to testify.

(2) A true copy of the report of the test result was mailed within seventy-two (72) hours of the taking of the test to the person submitting to a breath test.

(3) Any person submitting to a chemical test of blood, urine, or other body fluids shall have a true copy of the report of the test result mailed to him or her within thirty (30) days following the taking of the test.

(4) The test was performed according to methods and with equipment approved by the director of the department of health of the state of Rhode Island and by an authorized individual.

(5) Equipment used for the conduct of the tests by means of breath analysis had been tested for accuracy within thirty (30) days preceding the test by personnel qualified as hereinbefore provided, and breathalyzer operators shall be qualified and certified by the department of health within three hundred sixty-five (365) days of the test.

(6) The person arrested and charged with operating a motor vehicle while under the influence of intoxicating liquor, toluene, or any controlled substance as defined in chapter 28 of title 21, or, any combination of these in violation of subsection (a) of this section was afforded the opportunity to have an additional chemical test. The officer arresting or so charging the person shall have informed the person of this right and afforded him or her a reasonable opportunity to exercise this right, and a notation to this effect is made in the official records of the case in the police department. Refusal to permit an additional chemical test shall render incompetent and inadmissible in evidence the original report.

(d) (1) (i) Every person found to have violated subdivision (b)(1) of this section shall be sentenced as follows: for a first violation whose blood alcohol concentration is eight one-hundredths of one percent (.08%) but less than one-tenth of one percent (.1%) by weight or who has a blood presence of any scheduled controlled substance as defined in subdivision (b)(2) shall be subject to a fine of not less than one hundred dollars (\$ 100) nor more than three hundred dollars (\$ 300), shall be required to perform ten (10) to sixty (60) hours of public community restitution, and/or shall be imprisoned for

up to one year. The sentence may be served in any unit of the adult correctional institutions in the discretion of the sentencing judge and/or shall be required to attend a special course on driving while intoxicated or under the influence of a controlled substance, and his or her driver's license shall be suspended for thirty (30) days up to one hundred eighty (180) days.

(ii) Every person convicted of a first violation whose blood alcohol concentration is one-tenth of one percent (.1%) by weight or above but less than fifteen hundredths of one percent (.15%) or whose blood alcohol concentration is unknown shall be subject to a fine of not less than one hundred (\$ 100) dollars nor more than four hundred dollars (\$ 400) and shall be required to perform ten (10) to sixty (60) hours of public community restitution and/or shall be imprisoned for up to one year. The sentence may be served in any unit of the adult correctional institutions in the discretion of the sentencing judge. The person's driving license shall be suspended for a period of three (3) months to twelve (12) months. The sentencing judge shall require attendance at a special course on driving while intoxicated or under the influence of a controlled substance and/or alcoholic or drug treatment for the individual.

(iii) Every person convicted of a first offense whose blood alcohol concentration is fifteen hundredths of one percent (.15%) or above, or who is under the influence of a drug, toluene, or any controlled substance as defined in subdivision (b)(1) shall be subject to a fine of five hundred dollars (\$ 500) and shall be required to perform twenty (20) to sixty (60) hours of public community restitution and/or shall be imprisoned for up to one year. The sentence may be served in any unit of the adult correctional institutions in the discretion of the sentencing judge. The person's driving license shall be suspended for a period of three (3) months to eighteen (18) months. The sentencing judge shall require attendance at a special course on driving while intoxicated or under the influence of a controlled substance and/or alcohol or drug treatment for the individual.

(2) (i) Every person convicted of a second violation within a five (5) year period with a blood alcohol concentration of eight one-hundredths of one percent (.08%) or above but less than fifteen hundredths of one percent (.15%) or whose blood alcohol concentration is unknown or who has a blood presence of any controlled substance as defined in subdivision (b)(2), and every person convicted of a second violation within a five (5) year period regardless of whether the prior violation and subsequent conviction was a violation and subsequent conviction under this statute or under the driving under the influence of liquor or drugs statute of any other state, shall be subject to a mandatory fine of four hundred dollars (\$ 400). The person's driving license shall be suspended for a period of one year to two (2) years, and the individual shall be sentenced to not less than ten (10) days nor more than one year in jail. The sentence may be served in any unit of the adult correctional institutions in the discretion of the sentencing judge; however, not less than forty-eight (48) hours of imprisonment shall be served consecutively. The sentencing judge shall require alcohol or drug treatment for the individual, and may prohibit that person from operating a motor vehicle that is not equipped with an ignition interlock system for a period of one year to two (2) years following the completion of the sentence as provided in § 31-27-2.8.

(ii) Every person convicted of a second violation within a five (5) year period whose blood alcohol concentration is fifteen hundredths of one percent (.15%) or above by weight as shown by a chemical analysis of a blood, breath, or urine sample or who is under the influence of a drug, toluene, or any controlled substance as defined in subdivision (b)(1) shall be subject to mandatory imprisonment of not less than six (6) months nor more than one year, a mandatory fine of not less than one thousand dollars (\$ 1,000) and a mandatory license suspension for a period of two (2) years from the date of completion of the sentence imposed under this subsection.

(3) (i) Every person convicted of a third or subsequent violation within a five (5) year period with a blood alcohol concentration of eight one-hundredths of one percent (.08%) or above but less than fifteen hundredths of one percent

(.15%) or whose blood alcohol concentration is unknown or who has a blood presence of any scheduled controlled substance as defined in subdivision (b)(2) regardless of whether any prior violation and subsequent conviction was a violation and subsequent conviction under this statute or under the driving under the influence of liquor or drugs statute of any other state, shall be guilty of a felony and be subject to a mandatory fine of four hundred (\$ 400) dollars. The person's driving license shall be suspended for a period of two (2) years to three (3) years, and the individual shall be sentenced to not less than one year and not more than three (3) years in jail. The sentence may be served in any unit of the adult correctional institutions in the discretion of the sentencing judge; however, not less than forty-eight (48) hours of imprisonment shall be served consecutively. The sentencing judge shall require alcohol or drug treatment for the individual, and may prohibit that person from operating a motor vehicle that is not equipped with an ignition interlock system for a period of two (2) years following the completion of the sentence as provided in § 31-27-2.8.

(ii) Every person convicted of a third or subsequent violation within a five (5) year period whose blood alcohol concentration is fifteen hundredths of one percent (.15%) above by weight as shown by a chemical analysis of a blood, breath, or urine sample or who is under the influence of a drug, toluene or any controlled substance as defined in subdivision (b)(1) shall be subject to mandatory imprisonment of not less than three (3) years nor more than five (5) years, a mandatory fine of not less than one thousand dollars (\$ 1,000) nor more than five thousand dollars (\$ 5,000) and a mandatory license suspension for a period of three (3) years from the date of completion of the sentence imposed under this subsection.

(iii) In addition to the foregoing penalties, every person convicted of a third or subsequent violation within a five (5) year period regardless of whether any prior violation and subsequent conviction was a violation and subsequent conviction under this statute or under the driving under the influence of liquor or drugs statute of any other state shall be subject, in the discretion of the sentencing judge, to having the vehicle owned and operated by the violator seized and sold by the state of Rhode Island, with all funds obtained by the sale to be transferred to the general fund.

(4) (i) For purposes of determining the period of license suspension, a prior violation shall constitute any charge brought and sustained under the provisions of this section or § 31-27-2.1.

(ii) Any person over the age of eighteen (18) who is convicted under this section for operating a motor vehicle while under the influence of alcohol, other drugs, or a combination of these, while a child under the age of thirteen (13) years was present as a passenger in the motor vehicle when the offense was committed may be sentenced to a term of imprisonment of not more than one year and further shall not be entitled to the benefit of suspension or deferment of this sentence. The sentence imposed under this section may be served in any unit of the adult correctional institutions in the discretion of the sentencing judge.

(5) (i) Any person convicted of a violation under this section shall pay a highway assessment fine of five hundred dollars (\$ 500) which shall be deposited into the general fund. The assessment provided for by this subsection shall be collected from a violator before any other fines authorized by this section.

(ii) Any person convicted of a violation under this section shall be assessed a fee. The fee shall be as follows:

| FISCAL YEAR | FISCAL YEAR | FISCAL YEAR |
|-------------|-------------|-------------|
| 1993-1995 | 1996-1999 | 2000-2006 |
| \$ 147 | \$ 173 | \$ 86 |

(6) (i) If the person convicted of violating this section is under the age of eighteen (18) years, for the first violation he or she shall be required to perform ten (10) to sixty (60) hours of public community restitution, and the juvenile's driving license shall be suspended for a period of six (6) months, and may be suspended for a period up to eighteen (18) months. The sentencing judge shall also require attendance at a special course on driving while intoxicated or under the influence of a controlled substance and alcohol or drug education and/or treatment for the juvenile. The juvenile may also be required to pay a highway assessment fine of no more than five hundred dollars (\$ 500), and the assessment imposed shall be deposited into the general fund.

(ii) If the person convicted of violating this section is under the age of eighteen (18) years, for a second or subsequent violation regardless of whether any prior violation and subsequent conviction was a violation and subsequent under this statute or under the driving under the influence of liquor or drugs statute of any other state, he or she shall be subject to a mandatory suspension of his or her driving license until such time as he or she is twenty-one (21) years of age and may, in the discretion of the sentencing judge, also be sentenced to the Rhode Island training school for a period of not more than one year and/or a fine of not more than five hundred dollars (\$ 500).

(7) Any person convicted of a violation under this section may undergo a clinical assessment at a facility approved by the department of health. Should this clinical assessment determine problems of alcohol, drug abuse, or psychological problems associated with alcoholic or drug abuse, this person shall be referred to the T.A.S.C. (treatment alternatives to street crime) program for treatment placement, case management, and monitoring.

(e) Percent by weight of alcohol in the blood shall be based upon milligrams of alcohol per one hundred (100) cubic centimeters of blood.

(f) (1) There is established an alcohol and drug safety unit within the division of motor vehicles to administer an alcohol safety action program. The program shall provide for placement and follow-up for persons who are required to pay the highway safety assessment. The alcohol and drug safety action program will be administered in conjunction with alcohol and drug programs within the department of health.

(2) Persons convicted under the provisions of this chapter shall be required to attend a special course on driving while intoxicated or under the influence of a controlled substance, and/or participate in an alcohol or drug treatment program. The course shall take into consideration any language barrier which may exist as to any person ordered to attend, and shall provide for instruction reasonably calculated to communicate the purposes of the course in accordance with the requirements of the subsection. Any costs reasonably incurred in connection with the provision of this accommodation shall be borne by the person being retrained. A copy of any violation under this section shall be forwarded by the court to the alcohol and drug safety unit. In the event that persons convicted under the provisions of this chapter fail to attend and complete the above course or treatment program, as ordered by the judge, then the person may be brought before the court, and after a hearing as to why the order of the court was not followed, may be sentenced to jail for a period not exceeding one year.

(3) The alcohol and drug safety action program within the division of motor vehicles shall be funded by general revenue appropriations.

(g) The director of the health department of the state of Rhode Island is empowered to make and file with the secretary of state regulations which prescribe the techniques and methods of chemical analysis of the person's body fluids or breath, and the qualifications and certification of individuals authorized to administer this testing and analysis.

(h) Jurisdiction for misdemeanor violations of this section shall be with the district court for persons eighteen (18) years of age or older and to the family court for persons under the age of eighteen (18) years. The courts shall have full authority to impose any sentence authorized and to order the suspension of any license for violations of this section. All trials in the district court and family court of violations of the section shall be scheduled within thirty (30) days of the arraignment date. No continuance or postponement shall be granted except for good cause shown. Any continuances that are necessary shall be granted for the shortest practicable time. Trials in superior court are not required to be scheduled within thirty (30) days of the arraignment date.

(i) No fines, suspensions, assessments, alcohol or drug treatment programs, course on driving while intoxicated or under the influence of a controlled substance, public community restitution, or jail provided for under this section can be suspended.

(j) An order to attend a special course on driving while intoxicated that shall be administered in cooperation with a college or university accredited by the state, shall include a provision to pay a reasonable tuition for the course in an amount not less than twenty-five dollars (\$ 25.00), and a fee of one hundred seventy-five dollars (\$ 175), which fee shall be deposited into the general fund.

(k) For the purposes of this section, any test of a sample of blood, breath, or urine for the presence of alcohol, which relies in whole or in part upon the principle of infrared light absorption is considered a chemical test.

(l) If any provision of this section or the application of any provision shall for any reason be judged invalid, such a judgment shall not affect, impair, or invalidate the remainder of the section, but shall be confined in this effect to the provision or application directly involved in the controversy giving rise to the judgment.

§ 31-27-2.1. Refusal to submit to chemical test

(a) Any person who operates a motor vehicle within this state shall be deemed to have given his or her consent to chemical tests of his or her breath, blood, and/or urine for the purpose of determining the chemical content of his or her body fluids or breath. No more than two (2) complete tests, one for the presence of intoxicating liquor and one for the presence of toluene or any controlled substance, as defined in § 21-28-1.02(7), shall be administered at the direction of a law enforcement officer having reasonable grounds to believe the person to have been driving a motor vehicle within this state while under the influence of intoxicating liquor, toluene, or any controlled substance, as defined in chapter 28 of title 21, or any combination of these. The director of the department of health is empowered to make and file with the secretary of state, regulations which prescribe the techniques and methods of chemical analysis of the person's body fluids or breath and the qualifications and certification of individuals authorized to administer the testing and analysis.

(b) If a person for religious or medical reasons cannot be subjected to blood tests, the person may file an affidavit with the division of motor vehicles stating the reasons why he or she cannot be required to take blood tests, and a notation to this effect shall be made on his or her license. If that person is asked to submit to chemical tests as provided under this chapter, the person shall only be required to submit to chemical tests of his or her breath or urine. When a person is requested to submit to blood tests, only a physician or registered nurse or a medical technician certified under regulations promulgated by the director of the department of health may withdraw blood for the purpose of determining the alcoholic content in it. This limitation shall not apply to the taking of breath or urine specimens. The person tested shall be permitted to have a physician of his or her own choosing and at his or her own expense administer chemical tests of his or her breath, blood, and/or urine in addition to the tests administered at the direction of a law enforcement officer. If a

person having been placed under arrest refuses upon the request of a law enforcement officer to submit to the tests, as provided in § 31-27-2, none shall be given, but a judge of the traffic tribunal, upon receipt of a report of a law enforcement officer: that he or she had reasonable grounds to believe the arrested person had been driving a motor vehicle within this state under the influence of intoxicating liquor, toluene, or any controlled substance, as defined in chapter 28 of title 21, or any combination of these; that the person had been informed of his or her rights in accordance with § 31-27-3; that the person had been informed of the penalties incurred as a result of noncompliance with this section; and that the person had refused to submit to the tests upon the request of a law enforcement officer; shall promptly order that the person's operator's license or privilege to operate a motor vehicle in this state be immediately suspended and that the person's license be surrendered within five (5) days of notice of suspension. A traffic tribunal judge pursuant to the terms of subsection (c) of this section shall order as follows:

(1) Impose for the first violation a fine in the amount of two hundred dollars (\$ 200) to five hundred dollars (\$ 500) and shall order the person to perform ten (10) to sixty (60) hours of public community restitution. The person's driving license in this state shall be suspended for a period of three (3) months to six (6) months. The traffic tribunal judge shall require attendance at a special course on driving while intoxicated or under the influence of a controlled substance and/or alcohol or drug treatment for the individual.

(2) Impose for a second violation within a five (5) year period a fine in the amount of three hundred dollars (\$ 300) to five hundred dollars (\$ 500), and the person's driving license in this state shall be suspended for a period of one year to two (2) years. The traffic tribunal judge shall require alcohol and/or drug treatment for the individual.

(3) Impose for a third or subsequent violation within a five (5) year period a fine of four hundred dollars (\$ 400) to five hundred dollars (\$ 500), and the person's operator's license in this state shall be suspended for a period of two (2) years to three (3) years. The traffic tribunal judge shall require alcohol or drug treatment for the individual. Provided, that prior to the reinstatement of a license to a person charged with a third or subsequent violation within a three (3) year period, a hearing shall be held before a traffic tribunal judge. At the hearing the traffic tribunal judge shall review the person's driving record, his or her employment history, family background, and any other pertinent factors that would indicate that the person has demonstrated behavior which warrants the reinstatement of his or her license.

(4) For purposes of determining the period of license suspension, a prior violation shall constitute any charge brought and sustained under the provisions of this section or § 31-27-2.

(5) In addition to any other fines, a highway safety assessment of five hundred dollars (\$ 500) shall be paid by any person found in violation of this section, the assessment to be deposited into the general fund. The assessment provided for by this subsection shall be collected from a violator before any other fines authorized by this section.

(6) No fines, suspensions, assessments, alcohol or drug treatment programs, course on driving while intoxicated or under the influence of a controlled substance, or public community restitution provided for under this section, can be suspended.

(c) Upon suspending or refusing to issue a license or permit as provided in subsection (a) of this section, the traffic tribunal shall immediately notify the person involved in writing, and upon his or her request, within fifteen (15) days shall afford the person an opportunity for a hearing as early as practical upon receipt of a request in writing. Upon a hearing the traffic tribunal judge may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers. If the traffic tribunal judge finds after the hearing that: (1) the law enforcement officer making the sworn report had reasonable grounds to believe that the arrested person had been driving a motor

vehicle within this state while under the influence of intoxicating liquor, toluene, or any controlled substance, as defined in chapter 28 of title 21, or any combination of these; (2) the person while under arrest refused to submit to the tests upon the request of a law enforcement officer; (3) the person had been informed of his or her rights in accordance with § 31-27-3; and (4) the person had been informed of the penalties incurred as a result of noncompliance with this section; the traffic tribunal judge shall sustain the violation. The traffic tribunal judge shall then impose the penalties set forth in subsection (b) of this section. Action by the traffic tribunal judge must be taken within seven (7) days after the hearing, or it shall be presumed that the traffic tribunal judge has refused to issue his or her order of suspension.

(d) For the purposes of this section, any test of a sample of blood, breath, or urine for the presence of alcohol which relies in whole or in part upon the principle of infrared light absorption is considered a chemical test.

(e) If any provision of this section or the application of any provision shall for any reason be judged invalid, the judgment shall not affect, impair, or invalidate the remainder of the section, but shall be confined in this effect to the provisions or application directly involved in the controversy giving rise to the judgment.

§ 31-27-2.2. Driving under the influence of liquor or drugs, resulting in death

(a) When the death of any person other than the operator ensues as a proximate result of an injury received by the operation of any vehicle, the operator of which is under the influence of any intoxicating liquor, toluene, or any controlled substance as defined in chapter 28 of title 21, or any combination of these, the person so operating the vehicle shall be guilty of "driving under the influence of liquor or drugs, resulting in death".

(b) Any person charged with the commission of the offense set forth in subsection (a) of this section shall, upon conviction, be punished as follows:

(1) (i) Every person convicted of a first violation shall be punished by imprisonment in the state prison for not less than five (5) years and for not more than fifteen (15) years, in any unit of the adult correctional institutions in the discretion of the sentencing judge, by a fine of not less than five thousand dollars (\$ 5,000) nor more than ten thousand dollars (\$ 10,000) and his or her license to operate a motor vehicle shall be revoked for a period of five (5) years. The license privilege shall not be reinstated until evidence satisfactory to the administrator of the division of motor vehicles establishes that no grounds exist which would authorize the refusal to issue a license, and until the person gives proof of financial responsibility pursuant to chapter 32 of this title.

(ii) In addition, the person convicted may be required to successfully complete alcohol or drug treatment in a program of their choice, at their own expense, as authorized by a judge of the superior court, and may successfully complete the program before any license to operate a motor vehicle is renewed.

(2) Every person convicted of a second or subsequent violation within a five (5) year period in this state or any other state, provided the out-of-state conviction was based on the same blood-alcohol concentration as set forth in § 31-27-2 shall be punished by imprisonment in the state prison for not less than ten (10) years and for not more than twenty (20) years, in any unit of the adult correctional institutions in the discretion of the sentencing judge, by a fine of not less than ten thousand dollars (\$ 10,000) nor more than twenty thousand dollars (\$ 20,000) and his or her license to operate a motor vehicle shall be revoked for a period of five (5) years. In addition, the person convicted may be required to successfully complete alcohol or drug treatment, at their own expense, in a program established by the director of the department of corrections. The license privilege shall not be reinstated whether the convictions occurred in this or any other state until evidence satisfactory to the superior court, following a hearing establishes that no grounds exist which

would authorize the refusal to issue a license, and until the person gives proof of financial responsibility pursuant to chapter 32 of this title.

§ 31-27-2.3. Revocation of license upon refusal to submit to preliminary breath test

(a) When a law enforcement officer has reason to believe that a person is driving or in actual physical control of any motor vehicle in this state while under the influence of alcohol, the law enforcement officer may require the person to submit to a preliminary breath analysis for the purpose of determining the person's blood alcohol content. The breath analysis must be administered immediately upon the law enforcement officer's formulation of a reasonable belief that the person is driving or in actual control of a motor vehicle while under the influence of alcohol, or immediately upon the stop of the person, whichever is later in time. Any chemical breath analysis required under this section must be administered with a device and in a manner approved by the director of the department of health for that purpose. The result of a preliminary chemical breath analysis may be used for the purpose of guiding the officer in deciding whether an arrest should be made. When a driver is arrested following a preliminary breath analysis, tests may be taken pursuant to § 31-27-2.1. The results of a preliminary breath test may not be used as evidence in any administrative or court proceeding involving driving while intoxicated or refusing to take a breathalyzer test, except as evidence of probable cause in making the initial arrest.

(b) If a person refuses, upon a lawful request of a law enforcement officer, to submit to a test under subsection (a) of this section, that person shall be guilty of an infraction and shall be subject to the penalty provided in § 31-41.1-4. However, it shall be a defense to a charge of refusing a validly requested preliminary breath analysis that the medical condition of a person precluded the giving of any such test.

§ 31-27-2.4. Driving while in possession of controlled substances

(a) In addition to any other penalty prescribed by law, whoever operates any motor vehicle while knowingly having in the motor vehicle or in his or her possession, a controlled substance, as defined in § 21-28-1.02, shall have his or her license suspended for a period of six (6) months.

(b) This section shall not apply to any person who lawfully possesses a controlled substance, as defined in § 21-28-1.02, as a direct result and pursuant to a valid prescription from a licensed medical practitioner, or as otherwise authorized by chapter 28 of title 21.

§ 31-27-2.5. Chemical tests to persons under eighteen (18) years of age -- Refusal -- License suspension

(a) Any person under eighteen (18) years of age who shall refuse to submit to a chemical test as provided in § 31-27-2 shall have imposed all the penalties provided by § 31-27-2.1, but shall have his or her license suspended on a first violation for six (6) months, subject to the terms of subsection (e) of this section.

(b) Jurisdiction for violations of this section is given to the family court.

(c) If a person as set forth in subsection (a) of this section refuses, upon the request of a law enforcement officer, to submit to a test as provided in § 31-27-2.1, none shall be given, but a judge of the family court, upon receipt of a report or testimony of a law enforcement officer: that he or she had probable cause to stop the arrested person and reasonable grounds to believe the arrested person had been driving a motor vehicle within this state while impaired by intoxicating liquor, toluene, or any controlled substance, as defined in chapter 28 of title 21, or any combination of these; that the

person had been informed of his or her rights in accordance with § 31-27-3; that the person had been informed of the penalties to be incurred as a result of noncompliance with this section; and that the person had refused to submit to the test upon the request of a law enforcement officer; shall promptly order a hearing on whether the person's operator's license or privilege to operate a motor vehicle in this state shall be suspended. Upon suspension, the judge shall order the license of the person to be surrendered to the department of administration, division of motor vehicles, within three (3) days.

(d) If the person takes a test, as provided in § 31-27-2 and the test determines the person's blood alcohol concentration to be at least two-hundredths of one percent (.02%) but less than one-tenth of one percent (.1%) by weight, the person shall be determined to have been driving while impaired. A judge of the family court shall, pursuant to the terms of subsection (e) of this section, order as follows:

(1) A highway safety assessment of one hundred fifty dollars (\$ 150), or community restitution in lieu of highway safety assessment shall be paid by any person found in violation of this section. The assessment shall be deposited into the general fund.

(2) The person's driving license shall be suspended for six (6) months on a first violation, and may be suspended for a period of up to twelve (12) months, provided the person also shall attend a special course on driving while intoxicated and provided that the person shall also attend an alcohol and/or drug treatment program if ordered by the family court judge. Failure or refusal of the person to attend the course and/or alcohol or drug treatment program shall result in the person's driving license being suspended until the course or treatment program has been completed.

(3) On a second violation of this section, the person's driving license shall be suspended until he or she is twenty-one (21) years of age. The sentencing judge shall require alcohol and/or drug treatment for the individual.

(4) On a third or subsequent violation, the person's driving license shall be suspended for an additional period of two (2) years and the sentencing judge shall require alcohol and/or drug treatment for the individual.

(5) No suspensions, assessments, driving while intoxicated school, or alcohol and/or drug treatment programs under this section can be suspended, shortened, altered, or changed.

(e) Upon suspending a license or permit as provided in subsection (a), (c), or (d) of this section, the family court shall immediately notify the person involved, in writing, as well as the custodial parent if the person is under the age of eighteen (18) years.

(f) The police department which charges any person under eighteen (18) years of age with refusal to submit to a chemical test, driving while impaired by intoxicating liquors or drugs, or driving while under the influence of liquor or drugs, shall ascertain the name and address of the custodial parent of the person and shall notify the parent in writing within ten (10) days of the charge.

(g) The department of administration, upon issuing a first license to a person sixteen (16) or seventeen (17) years of age, shall provide a written notice of the penalties provided by this section. Any violation of this section shall not be considered a criminal offense.

§ 31-27-2.6. Driving under the influence of liquor or drugs, resulting in serious bodily injury

(a) When serious bodily injury of any person other than the operator is caused by the operation of any motor vehicle, the operator of which is under the influence of any intoxicating liquor, toluene, or any controlled substance as defined in chapter 28 of title 21 or any combination of these, the person so operating the vehicle shall be guilty of driving under the influence of liquor or drugs, resulting in serious bodily injury.

(b) As used in this section, "serious bodily injury" means physical injury that creates a substantial risk of death or causes serious physical disfigurement or protracted loss or impairment of the function of any bodily member or organ.

(c) Any person charged with the commission of the offense set forth in subsection (a) of this section shall, upon conviction, be punished by imprisonment for not less than one year and for not more than ten (10) years and by a fine of not less than one thousand dollars (\$ 1,000) nor more than five thousand dollars (\$ 5,000). The sentencing judge shall have the discretion to sentence the person to any unit of the adult correctional institutions. The license of the person may be revoked for a period of up to two (2) years. The license privilege shall not be reinstated until evidence satisfactory to the administrator of the division of motor vehicles establishes that no grounds exist which would authorize refusal to issue a license and until the person gives proof of financial responsibility pursuant to chapter 32 of this title. In addition, the person convicted may be required to successfully complete alcohol or drug treatment, at their own expense, in a program established by the director of the department of corrections.

(d) For a second or subsequent conviction under this section within a five (5) year period, a person shall be punished by imprisonment for not less than two (2) years nor more than fifteen (15) years and by a fine of not less than three thousand dollars (\$ 3,000) nor more than ten thousand dollars (\$ 10,000). The sentencing judge shall have the discretion to sentence the person to any unit of the adult correctional institutions. In addition, the person convicted may be required to successfully complete alcohol or drug treatment, at their own expense, in a program established by the director of the department of corrections. The license of the person may be revoked for a period of up to four (4) years. The license privilege shall not thereafter be reinstated until evidence satisfactory to the administrator of the division of motor vehicles establishes that no grounds exist which would authorize refusal to issue a license and until the person gives proof of financial responsibility pursuant to chapter 32 of this title.

§ 31-27-2.7. Driving while impaired

(a) A person under the age of twenty-one (21) but at least eighteen (18) years of age who takes a test, as provided for in § 31-27-2, at the request of a law enforcement officer who believes the person to be driving under the influence of alcohol, shall be determined to have been driving while impaired if the test determines the person's blood alcohol concentration to be at least two-hundredths of one percent (.02%) but less than one-tenth of one percent (.1%) by weight.

(b) Should, after a hearing in district court, it be determined that: the results of the test are admissible in that it meets all of the conditions, as set forth in § 31-27-2; and the person has been afforded his or her rights as set forth in § 31-27-2; then the judge shall order as follows:

(1) A fine of not more than two hundred and fifty dollars (\$ 250) and thirty (30) hours of community restitution. The fine shall be deposited in the general fund.

(2) The person's driving license shall be suspended for not less than one nor more than three (3) months on a first violation, provided the person also shall attend a special course in driving while intoxicated and provided that the person shall also attend an alcohol and/or drug treatment program if ordered by the district court judge. Failure or refusal of the

person to attend the course and/or alcohol or drug treatment program shall result in the person's driving license being suspended until such time as the course and/or treatment program has been completed.

(3) On a second and subsequent violation of the section, the person shall be fined not more than two hundred and fifty dollars (\$ 250) together with a highway safety assessment of three hundred dollars (\$ 300) and shall be required to perform up to sixty (60) hours of community restitution. The person's driving license shall be suspended for not less than three (3) months nor more than six (6) months. The sentencing judge shall also require the person to attend a special course in driving while intoxicated and also attend an alcohol and/or drug treatment program.

(c) No suspension, assessments, driving while intoxicated school, or alcohol and/or drug treatment programs under this section can be suspended, shortened, altered, or changed.

(d) Any violation of the section shall not be considered a criminal offense.

§ 31-27-2.8. Ignition interlock system imposed as part of sentence -- Requirements

Any person convicted under the provisions of § 31-27-2(d)(2) or (3) may be prohibited by the sentencing judge from operating a motor vehicle that is not equipped with an ignition interlock system for a period of not more than two (2) years following the completion of any sentence imposed pursuant to that section.

§ 31-27-3. Right of person charged with operating under influence to physical examination

A person arrested and charged with operating a motor vehicle while under the influence of narcotic drugs or intoxicating liquor, whatever its alcoholic content, shall have the right to be examined at his or her own expense immediately after the person's arrest by a physician selected by the person, and the officer so arresting or so charging the person shall immediately inform the person of this right and afford the person a reasonable opportunity to exercise the right, and at the trial of the person the prosecution must prove that he or she was so informed and was afforded that opportunity.

§ 31-27-14. Penalty for felonies

Any person who is convicted of a violation of any provision of chapters 1 -- 27 of this title, by this chapter or by the laws of this state declared to constitute a felony, shall be punished by imprisonment for not less than one year nor more than five (5) years, or by a fine of not more than five thousand dollars (\$ 5,000), or by both fine and imprisonment.

§ 31-40-2. "Habitual offender" defined

An "habitual offender" is any person, resident or nonresident, whose record, as maintained in the office of the division of motor vehicles, shows that the person has accumulated the convictions, or findings of delinquency or waywardness in the case of juveniles, for separate and distinct offenses, described in subdivisions (1), (2), and (3) of this section, committed within a three (3) year period, provided that where more than one included offense shall be committed within a six (6) hour period the multiple offenses shall, on the first occasion, be treated for the purposes of this article as one offense, provided the person charged has no record of prior offenses chargeable under this article, and provided further that the date of the offense most recently committed occurs within three (3) years of the date of all other offenses the conviction for which is included in subdivision (1), (2), or (3) of this section as follows:

(1) Three (3) or more convictions, or findings of delinquency or waywardness in the case of a juvenile, singularly or in

combination, of the following separate and distinct offenses arising out of separate acts:

- (i) Voluntary or involuntary manslaughter resulting from the operation of a motor vehicle;
 - (ii) Driving or operating a motor vehicle while under the influence of liquor or drugs in violation of § 31-27-2;
 - (iii) Driving a motor vehicle while his or her license, permit, or privilege to drive a motor vehicle has been suspended or revoked in violation of § 31-27-2.1 or chapter 11 of this title;
 - (iv) Willfully operating a motor vehicle without a license;
 - (v) Knowingly making any false affidavit or swearing or affirming falsely to any matter or thing required by the motor vehicle laws or as to information required in the administration of the laws;
 - (vi) Any offense punishable as a felony under the motor vehicle laws of Rhode Island or any felony in the commission of which a motor vehicle is used;
 - (vii) Failure of the driver of a motor vehicle involved in an accident resulting in the death or injury of any person to stop close to the scene of the accident and report his or her identity in violation of § 31-26-1; or
 - (viii) Failure of the driver of a motor vehicle involved in an accident resulting only in damage to an attended or unattended vehicle or other property in excess of one hundred fifty dollars (\$ 150) to stop close to the scene of the accident and report his or her identity or otherwise report the accident.
- (2) Six (6) or more convictions, or findings of delinquency or waywardness in the case of a juvenile, of separate and distinct offenses, singularly or in combination, in the operation of a motor vehicle which are required to be reported to the division of motor vehicles and the commission of which requires the division of motor vehicles or authorizes a court to suspend or revoke the privilege to operate motor vehicles on the highways of this state for a period of thirty (30) days or more, and the convictions shall include those offenses enumerated in paragraph (1)(ii) of this section when taken with and added to those offenses described in this section.
- (3) The offenses included in subdivisions (1) and (2) of this section shall be deemed to include offenses under any valid town or city ordinance paralleling and substantially conforming to the state statutory provisions cited in subdivisions (1) and (2) of this section and all changes in or amendments of them, and any federal law, and law of another state or any valid town, city, or county ordinance of another state substantially conforming to those statutory provisions.