

State DUI Laws: Tennessee

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

Tennessee Code Annotated

39-13-106. Vehicular assault

(a) A person commits vehicular assault who, as the proximate result of the person's intoxication as set forth in § 55-10-401, recklessly causes serious bodily injury to another person by the operation of a motor vehicle. For the purposes of this section, "intoxication" includes alcohol intoxication as defined by § 55-10-408, drug intoxication, or both.

(b) A violation of this section is a Class D felony.

(c) Upon the conviction of a person for the first offense of vehicular assault, the court shall prohibit such convicted person from driving a vehicle in this state for a period of one (1) year. For the second such conviction, the court shall prohibit such convicted person from driving a vehicle in this state for a period of two (2) years. For the third such conviction, the court shall prohibit such convicted person from driving a vehicle in this state for a period of three (3) years. For fourth and subsequent convictions, the court shall prohibit the person from driving a vehicle in this state for a period of five (5) years.

39-13-213. Vehicular homicide

(a) Vehicular homicide is the reckless killing of another by the operation of an automobile, airplane, motorboat or other motor vehicle:

(1) As the proximate result of conduct creating a substantial risk of death or serious bodily injury to a person; or

(2) As the proximate result of the driver's intoxication as set forth in § 55-10-401. For the purposes of this section, "intoxication" includes alcohol intoxication as defined by § 55-10-408, drug intoxication, or both.

(b) Vehicular homicide is a Class C felony, unless it is the proximate result of driver intoxication as set forth in subdivision (a)(2), in which case it is a Class B felony.

(c) The court shall prohibit a defendant convicted of vehicular homicide from driving a vehicle in this state for a period of time not less than three (3) years nor more than ten (10) years.

39-13-218. Aggravated vehicular homicide

(a) Aggravated vehicular homicide is vehicular homicide, as defined in § 39-13-213(a)(2), where:

(1) The defendant has two (2) or more prior convictions for:

(A) Driving under the influence of an intoxicant;

(B) Vehicular assault; or

(C) Any combination of such offenses;

(2) The defendant has one (1) or more prior convictions for the offense of vehicular homicide; or

(3) There was at the time of the offense twenty-hundredths of one percent (.20%), or more, by weight of alcohol in the defendant's blood and the defendant has one (1) prior conviction for:

(A) Driving under the influence of an intoxicant; or

(B) Vehicular assault.

(b) (1) As used in this section, unless the context otherwise requires, "prior conviction" means an offense for which the defendant was convicted prior to the commission of the instant vehicular homicide and includes convictions occurring prior to July 1, 1996.

(2) "Prior conviction" includes convictions under the laws of any other state, government, or country which, if committed in this state, would have constituted one (1) of the three (3) offenses enumerated in subdivision (a)(1) or (a)(2). In the event that a conviction from a jurisdiction other than Tennessee is not specifically named the same as one (1) of the three (3) offenses enumerated in subdivision (a)(1) or (a)(2), the elements of the offense in the other jurisdiction shall be used by the Tennessee court to determine if such offense constitutes one (1) of the prior convictions required by subsection (a).

(c) If the defendant is charged with aggravated vehicular homicide, the indictment, in a separate count, shall specify, charge and give notice of the required prior conviction or convictions. If the defendant is convicted of vehicular homicide under § 39-13-213(a)(2), the jury shall then separately consider whether the defendant has the requisite number and types of prior offenses and/or level of blood alcohol concentration necessary to constitute the offense of aggravated vehicular homicide. If the jury convicts the defendant of aggravated vehicular homicide, the court shall pronounce judgment and sentence the defendant from within the felony classification set out in subsection (d).

(d) Aggravated vehicular homicide is a Class A felony.

55-10-401. Driving under the influence of intoxicant, drug or drug producing stimulant prohibited -- Alcohol concentration in blood or breath

(a) It is unlawful for any person to drive or to be in physical control of any automobile or other motor driven vehicle on any of the public roads and highways of the state, or on any streets or alleys, or while on the premises of any shopping

center, trailer park or any apartment house complex, or any other premises which is generally frequented by the public at large, while:

(1) Under the influence of any intoxicant, marijuana, narcotic drug, or drug producing stimulating effects on the central nervous system; or

(2) The alcohol concentration in such person's blood or breath is eight-hundredths of one percent (.08 %) or more.

(b) For the purpose of this section, "drug producing stimulating effects on the central nervous system" includes the salts of barbituric acid, also known as malonyl urea, or any compound, derivatives, or mixtures thereof that may be used for producing hypnotic or somnifacient effects, and includes amphetamine, desoxyephedrine or compounds or mixtures thereof, including all derivatives of phenoethylamine or any of the salts thereof, except preparations intended for use in the nose and unfit for internal use.

55-10-402. No defense that person is lawful user

The fact that any person or persons who drive while under the influence of narcotic drugs, or shall drive while under the influence of barbituric drugs, is or has been entitled to use such drugs under the laws of this state, shall not constitute a defense to the violation of §§ 55-10-401 -- 55-10-404.

55-10-403. Penalty for violations of §§ 55-10-401 -- 55-10-404 -- Inpatient alcohol and drug treatment -- Restricted license -- Strip searches -- Forfeiture of vehicles -- Blood alcohol concentration test fee

(a) (1) Any person or persons violating the provisions of §§ 55-10-401 -- 55-10-404 shall, upon conviction thereof, for the first offense be fined not less than three hundred fifty dollars (\$ 350) nor more than one thousand five hundred dollars (\$ 1,500), and such person or persons shall be confined in the county jail or workhouse for not less than forty-eight (48) hours nor more than eleven (11) months and twenty-nine (29) days; and the court shall prohibit such convicted person from driving a vehicle in the state of Tennessee for a period of time of one (1) year. In addition to the other penalties set out for a first offense violation, if at the time of such offense the alcohol concentration in such person's blood or breath is twenty hundredths of one percent (.20%) or more, the minimum period of confinement for such person shall be seven (7) consecutive calendar days rather than forty-eight (48) hours. The provisions of this section constitute an enhanced sentence, not a new offense. For conviction on the second offense, there shall be imposed a fine of not less than six hundred dollars (\$ 600) nor more than three thousand five hundred dollars (\$ 3,500), and the person or persons shall be confined in the county jail or workhouse for not less than forty-five (45) days nor more than eleven (11) months and twenty-nine (29) days, and the court shall prohibit such convicted person or persons from driving a vehicle in the state of Tennessee for a period of time of two (2) years. Upon the conviction of a person on the second offense only, a judge may sentence such person to participate in a court approved alcohol or drug treatment program. For the third conviction, there shall be imposed a fine of not less than one thousand one hundred dollars (\$ 1,100) nor more than ten thousand dollars (\$ 10,000), and the person or persons shall be confined in the county jail or workhouse for not less than one hundred twenty (120) days nor more than eleven (11) months and twenty-nine (29) days, and the court shall prohibit such convicted person or persons from driving a vehicle in the state of Tennessee for a period of time of not less than three (3) years nor more than ten (10) years. Notwithstanding any other provision of law to the contrary, the fourth or subsequent conviction shall be a Class E felony punishable by a fine of not less than three thousand dollars (\$ 3,000) nor more than fifteen thousand dollars (\$ 15,000); by confinement for not less than one hundred fifty (150) consecutive days, to be served day for day, nor more than the maximum punishment authorized for the appropriate range of a Class E felony; and the court shall prohibit the person from driving a motor vehicle for a period of five (5)

years. For the provisions of the preceding sentence to apply, at least one (1) of the violations of § 55-10-401 must occur on or after July 1, 1998. After service of at least the minimum sentence day for day, the judge has the discretion to require an individual convicted of a violation of the provisions of §§ 55-10-401 -- 55-10-404 to remove litter from the state highway system, public playgrounds, public parks or other appropriate locations for any prescribed period or to work in a recycling center or other appropriate location for any prescribed period of time in lieu of or in addition to any of the penalties otherwise provided in this section; provided, that any person sentenced to remove litter from the state highway system, public playgrounds, public parks or other appropriate locations or to work in a recycling center shall be allowed to do so at a time other than such person's regular hours of employment.

(2) A portion of any fine imposed upon a person for a violation of this section, up to the maximum fine actually imposed, shall be returned to the sheriff of a county jail or to the chief administrative officer of a city jail for the purpose of reimbursing such sheriff or officer for the cost of incarcerating such person for each night such person is actually in custody for a violation of this section. Such reimbursement shall be in the same amount as is provided by § 8-26-105, and shall not in any event be less than the actual cost of maintaining such person and shall be reimbursed in the manner provided by § 8-26-106.

(3) For purposes of this section, a person who is convicted of a violation of § 55-10-401 shall not be considered a repeat or multiple offender and subject to the penalties prescribed in subsection (a), if ten (10) or more years have elapsed between such conviction and any immediately preceding conviction for a violation. If, however, a person has been convicted of a violation of § 55-10-401 within ten (10) years of the present violation, then such person shall be considered a multiple offender and is subject to the penalties imposed upon multiple offenders by the provisions of subsection (a). If a person is considered a multiple offender under this subdivision (a)(3), then every conviction for a violation of § 55-10-401, within ten (10) years of the immediately preceding violation shall be considered in determining the number of prior offenses, but in no event shall a conviction for a violation occurring more than twenty (20) years from the date of the instant conviction be considered for such purpose.

(4) (A) If the court orders participation in an inpatient alcohol and drug treatment program pursuant to subdivision (a)(1), such treatment program shall not exceed a period of twenty-eight (28) days. During this period of confinement in inpatient treatment, the person ordered to participate shall be confined to the inpatient treatment center and shall not, without further court order, be released for any reason until the completion of the treatment. In the event such person does not complete the confinement in the treatment program, that person shall be returned to the county jail or workhouse to serve the full period of the confinement imposed without any credit allowed for time spent in the program. Upon completion of the confinement in the program, the remainder of the confinement imposed shall be served in the county jail or workhouse.

(B) The court is not empowered to order the expenditure of public funds to provide treatment. However, if a person ordered to participate in such a program is indigent, the court may allow such person, subject to availability of services, to enter any program that provides such treatment without cost to an individual. When making a finding as to the indigency of an accused, the court shall take into consideration:

- (i) The nature of the services of the program rendered;
- (ii) The usual and customary charges for rendering such program in the community;
- (iii) The income of the accused regardless of source;

- (iv) The poverty level guidelines compiled and published by the United States department of labor;
- (v) The ownership or equity of any real or personal property of the accused; and
- (vi) Any other circumstances presented to the court which are relevant to the issue of indigency.

If a person ordered to participate is not indigent and participates in a program that provides treatment without cost to an individual, that person shall be obligated to pay for treatment in the same manner as provided in § 33-2-1202. If a person ordered to participate, participates in a court approved private treatment program, that person shall be responsible for the cost and fees involved with the program.

(b) (1) No person charged with violating the provisions of §§ 55-10-401 -- 55-10-404 shall be eligible for suspension of prosecution and dismissal of charges pursuant to the provisions of §§ 40-15-102 -- 40-15-105 and 40-32-101(a)(3)-(c)(3) or for any other pretrial diversion program, nor shall any person convicted under such sections be eligible for suspension of sentence or probation pursuant to § 40-21-101 [repealed] or any other provision of law authorizing suspension of sentence or probation until such time as such person has fully served day for day at least the minimum sentence provided by law.

(2) Unless the judge, using the applicable criteria set out in § 40-14-202(b), determines that a person convicted of violating the provisions of §§ 55-10-401 -- 55-10-404 is indigent, the minimum applicable fine shall be mandatory and shall not be subject to reduction or suspension. All fines are to be paid on the date sentence is imposed unless the court makes an affirmative finding that the defendant lacks a present ability to pay. The court shall then order a date certain before which payment shall be made. Should the defendant fail to comply with the order of the court, the clerk shall notify the court of such failure for further proceedings.

(c) All persons sentenced under subsection (a) shall, in addition to service of at least the minimum sentence, be required to serve the difference between the time actually served and the maximum sentence on probation. The judge has the discretion to impose any conditions of probation which are reasonably related to the offense, but shall impose the following conditions:

- (1) Participation in an alcohol and drug safety DUI school, and/or drug offender school program, if available; or
- (2) Upon the second or subsequent conviction for violating the provisions of § 55-10-401 or § 39-17-418, involving the possession of a controlled substance, participation in a program of rehabilitation at an alcohol or drug treatment facility, if available; and
- (3) The payment of restitution to any person suffering physical injury or personal losses as the result of such offense if such person is economically capable of making such restitution.
- (4) Notwithstanding any other provision of law to the contrary, if a person convicted of a violation of § 55-10-401 has a prior conviction for a violation of § 55-10-401 within the past five (5) years, the court shall order such person to undergo a drug and alcohol assessment and receive treatment as appropriate. Unless the court makes a specific determination that the person is indigent, the expense of such assessment and treatment shall be the responsibility of the person receiving it. Notwithstanding the provisions of subdivision (a)(4)(B), if the court finds that the person is indigent, the expense or some portion of the expense may be paid from the alcohol and drug addiction treatment fund established in § 40-33-211(c)(2) pursuant to a plan and procedures developed by the department of health.

(d) (1) (A) Except as provided in subdivision (d)(2), if a person's motor vehicle operator's license has been revoked pursuant to subsection (a), such person may apply to the trial judge for a restricted driver license. The trial judge may order the issuance of a restricted motor vehicle operator's license in accordance with § 55-50-502, if based upon the records of the department of safety:

(i) The violation resulting in the person's present conviction for driving under the influence of an intoxicant occurred on or after July 1, 2000;

(ii) The person does not have a prior conviction for a violation of § 39-13-106, § 39-13-213(a)(2), or § 39-13-218, in this state or a similar offense in another state; and

(iii) The person does not have a prior conviction for a violation of § 55-10-401 or § 55-10-418 within ten (10) years of the present violation in this state or a similar offense in another state.

(iv) The trial judge may issue such order allowing the person so convicted to operate a motor vehicle for the limited purposes of going to and from:

(a) Such person's regular place of employment and any work-related driving;

(b) A court-ordered alcohol safety program;

(c) A college or university in the case of a student enrolled full time in such college or university; and

(d) A scheduled interlock monitoring appointment.

(B) (i) A Tennessee resident, whose operator's license has been revoked because of a conviction in another jurisdiction for operating a motor vehicle while under the influence of an intoxicant, may apply for a restricted license to a judge of any court of the county of such person's residence having jurisdiction to try charges for driving under the influence of an intoxicant. The trial judge may order the issuance of a restricted motor vehicle operator's license in accordance with § 55-50-502(c), if based upon the records of the department:

(a) The violation resulting in the person's present conviction for driving under the influence of an intoxicant occurred on or after July 1, 2000; and

(b) The person does not have a prior conviction for a violation of § 55-10-401 or § 55-10-418 within ten (10) years of the present violation, or of § 39-13-213(a)(2), § 39-13-218, or § 39-13-106, in this state, or a similar offense in another jurisdiction.

(ii) If a copy of the judgment of conviction certified by the court that tried the case in the other jurisdiction accompanies the restricted license application, the trial judge may issue such order allowing the person so convicted to operate a motor vehicle for the limited purposes of going to and from:

(a) And working at such person's regular place of employment;

(b) A court-ordered alcohol safety program;

(c) A college or university in the case of a student enrolled full time in such college or university; and

(d) A scheduled interlock monitoring appointment.

(C) Such order shall state with all practicable specificity the necessary time and places of permissible operation of a motor vehicle and shall be made a part of the order or judgment of the court. The order may be presented within ten (10) days after the date of conviction to the department, accompanied by a fee of sixty-five dollars (\$ 65.00). If the person has first successfully completed a driver's license examination, the department shall forthwith issue a restricted license embodying the limitations imposed upon the person so convicted.

(D) If the violation resulting in the person's conviction for DUI occurred prior to July 1, 2000, the law in effect when such violation occurred shall govern the person's eligibility for a restricted motor vehicle operator license.

(2) If during the course of conduct which was the basis for a driver's conviction under §§ 55-10-401 -- 55-10-404, another person is killed or suffers serious bodily injury as the proximate result of such driver's intoxication, such driver shall not be eligible for and the court shall not have the authority to grant the issuance of a restricted motor vehicle operator's license until such time as the period of suspension mandated by subsection (a) has expired, notwithstanding the fact that it may be the driver's first such conviction.

(3) Any person whose motor vehicle operator's license has been revoked pursuant to subsection (a), and such person has a prior conviction for a violation of § 55-10-401 or § 55-10-418 within ten (10) years of the present violation, or § 39-13-106, § 39-13-213(a)(2), or § 39-13-218, in this state, or a similar offense in any other jurisdiction, shall not be eligible for, nor shall the court have the authority to grant or order, the issuance of a restricted motor vehicles' operator's license.

(4) (A) Notwithstanding the provisions of subdivision (d)(3), the trial judge may order the issuance of a restricted motor vehicle operator's license in accordance with § 55-50-502 to any person whose motor vehicle operator's license has been revoked pursuant to subsection (a) for a period of two (2) years and who has a prior conviction for a violation of § 55-10-401 or § 55-10-418, in this state or a similar offense in any other jurisdiction; provided, however, that such person shall not be eligible for and the court shall not have the authority to grant the issuance of a restricted motor vehicle operator's license until the expiration of a one (1) year revocation period. Such restricted license may be issued for the same purposes set out in subdivision (d)(1)(A).

(B) If the court orders the issuance of a restricted motor vehicle operator's license pursuant to this subdivision (d)(4), the court shall also order such person to operate only a motor vehicle or motorcycle that is equipped with a functioning interlock device. The court shall also order such device to be installed on all vehicles owned or leased by the person at such person's own expense for the entire period of the restricted license and for a period of six (6) months after the license revocation period has expired as required in § 55-10-412(l).

(e) The provisions of this section shall not be construed to in any way limit the provisions of § 55-50-303 or § 55-50-502, nor to limit the power and authority of the department of safety to revoke or suspend the driver license under the provisions of chapter 50 of this title.

(f) Any restricted license issued under this section is subject to renewal in the same manner as other motor vehicle licenses.

(g) (1) Any person convicted of an initial or subsequent offense shall be advised, in writing, of the penalty for second and subsequent convictions, and, in addition, when pronouncing sentence the judge shall advise the defendant of the penalties for additional offenses. Written notice by the judge shall inform the defendant that a conviction for the offense of driving under the influence of an intoxicant committed in another state shall be used to enhance the punishment for a violation of § 55-10-401 committed in this state.

(2) In the prosecution of second or subsequent offenders, the indictment or charging instrument must allege the prior conviction or convictions for violating any of the provisions of § 55-10-401, § 39-13-213(a)(2), § 39-13-106, § 39-13-218 or § 55-10-418, setting forth the time and place of each prior conviction or convictions. When the state uses a conviction for the offense of driving under the influence of an intoxicant, aggravated vehicular homicide, vehicular homicide, vehicular assault or adult driving while impaired committed in another state for the purpose of enhancing the punishment for a violation of § 55-10-401, the indictment or charging instrument must allege the time, place and state of such prior conviction.

(3) (i) Notwithstanding any other rule of evidence or law to the contrary, in the prosecution of second or subsequent offenders under this chapter the official driver record maintained by the department and produced upon a certified computer printout shall constitute prima facie evidence of the prior conviction.

(ii) Following indictment by a grand jury, the defendant shall be given a copy of the department of safety printout at the time of arraignment. If the charge is by warrant, the defendant is entitled to a copy of the department printout at the defendant's first appearance in court or at least fourteen (14) days prior to a trial on the merits.

(iii) Upon motion properly made in writing alleging that one (1) or more prior convictions are in error and setting forth the error, the court may require that a certified copy of the judgment of conviction of such offense be provided for inspection by the court as to its validity prior to the department printout being introduced into evidence.

(h) (1) In addition to all other fines, fees, costs and punishments now prescribed by law, in counties having a population of not less than three hundred thirty-five thousand (335,000) nor more than three hundred thirty-six thousand (336,000), or in counties having a population of more than seven hundred thousand (700,000) according to the 1990 federal census or any subsequent federal census, a blood alcohol concentration (BAT) test fee in the amount of seventeen dollars and fifty cents (\$ 17.50) will be assessed upon conviction of an offense of driving while intoxicated, for each offender who has taken a breath-alcohol test on an evidential breath testing unit provided, maintained and administered by a law enforcement agency in the counties or where breath, blood or urine has been analyzed by a publicly funded forensic laboratory.

(2) In addition to all other fines, fees, costs and punishments now prescribed by law, in counties having a metropolitan form of government with a population greater than one hundred thousand (100,000) according to the 1990 federal census or any subsequent federal census, a blood alcohol concentration (BAT) test fee in an amount to be established by resolution of the legislative body of any county to which this subdivision (h)(2) applies, not to exceed fifty dollars (\$ 50.00), will be assessed upon conviction of an offense of driving while intoxicated, for each offender who has taken a breath-alcohol test on an evidential breath testing unit provided, maintained and administered by a law enforcement agency in the counties or where breath, blood or urine has been analyzed by a publicly funded forensic laboratory.

(3) This fee shall be collected by the clerks of various courts of the counties and forwarded to the county trustee on a monthly basis and designated for exclusive use by the law enforcement testing unit of the counties if the blood alcohol concentration test (BAT) was conducted on an evidential breath testing unit. If the blood alcohol test was conducted by a

publicly funded forensic laboratory, the fee shall be collected by the clerks of the various courts of the counties and forwarded to the county trustee on a monthly basis and designated for exclusive use by the publicly funded forensic laboratory.

(4) In counties having a metropolitan form of government with a population greater than one hundred thousand (100,000) according to the 1990 federal census or any subsequent federal census, this fee shall be collected by the clerks of the various courts of the counties and forwarded to the county trustee on a monthly basis. If the blood alcohol concentration test (BAT) was conducted on an evidential breath testing unit, seventeen dollars and fifty cents (\$ 17.50) of such fee shall be designated for exclusive use by the law enforcement testing unit of the county. The county trustee shall deposit the remainder of such fee in the general fund of the county. If the blood alcohol test was conducted by a publicly funded forensic laboratory, seventeen dollars and fifty cents (\$ 17.50) of such fee collected by the clerks of the various courts of the counties and forwarded to the county trustee on a monthly basis shall be designated for exclusive use by the publicly funded forensic laboratory. The county trustee shall deposit the remainder of such fee in the general fund of the county.

(i) In addition to all other criminal penalties, costs, taxes and fees now prescribed by law, any person convicted of violating the provisions of §§ 55-10-401 -- 55-10-404 will be assessed a fee of five dollars (\$ 5.00), to be paid into the state treasury and deposited to the credit of the fund established pursuant to § 9-4-206.

(j) No person arrested under the provisions of this section shall be subjected to strip searches and/or body cavity searches unless the arresting officer has probable cause to believe the arrested person may be concealing a weapon and/or contraband in such arrested person's body cavity. Contraband includes, but is not limited to, illegal drugs.

(k) (1) The vehicle used in the commission of a person's second or subsequent violation of § 55-10-401, or the second or subsequent violation of any combination of § 55-10-401, and a statute in any other state prohibiting driving under the influence of an intoxicant, is subject to seizure and forfeiture in accordance with the procedure established in title 40, chapter 33, part 2. The department of safety is designated as the applicable agency, as defined by § 40-33-202, for all forfeitures authorized by this subsection (k).

(2) In order for the provisions of subdivision (k)(1) to be applicable to a vehicle, the violation making the vehicle subject to seizure and forfeiture must occur in Tennessee and at least one (1) of the previous violations must occur on or after January 1, 1997, and the second offense after January 1, 1997, occurs within five (5) years of the first offense occurring after January 1, 1997.

(3) It is the specific intent that a forfeiture action under this section shall serve a remedial and not a punitive purpose. The purpose of the forfeiture of a vehicle after a person's second or subsequent DUI violation is to prevent unscrupulous or incompetent persons from driving on Tennessee's highways while under the influence of alcohol or drugs. Driving a motor vehicle while under the influence of alcohol or drugs endangers the lives of innocent people who are exercising the same privilege of riding on the state's highways. There is a reasonable connection between the remedial purpose of this section, ensuring safe roads, and the forfeiture of a motor vehicle. While this section may serve as a deterrent to the conduct of driving a motor vehicle while under the influence of alcohol or drugs, it is nonetheless intended as a remedial measure. Moreover, the statute serves to remove a dangerous instrument from the hands of individuals who have demonstrated a pattern of driving a motor vehicle while under the influence of alcohol or drugs.

(4) Only P.O.S.T.-certified or state-commissioned law enforcement officers will be authorized to seize such vehicles under this section.

(l) For the purpose of enhancing the punishment of a person convicted of violating § 55-10-401, the state shall use a conviction for the offense of driving under the influence of an intoxicant that occurred in another state.

(m) A violation of this part is a Class A misdemeanor. Nothing in Acts 1989, ch. 591, the Sentencing Reform Act of 1989, shall be construed as altering, amending or decreasing the penalties established in this section for the offense of driving under the influence of an intoxicant.

(n) Notwithstanding the provisions of this section to the contrary, in counties with a metropolitan form of government and a population in excess of one hundred thousand (100,000) according to the 1990 federal census or any subsequent federal census, the judge exercising criminal jurisdiction may sentence a person convicted of violating the provisions of § 55-10-401, for the first time to perform two hundred (200) hours of public service work in a supervised public service program in lieu of the minimum period of confinement required by the provisions of subsection (a).

(o) For the sole purpose of enhancing the punishment for a violation of § 55-10-401, a prior conviction for a violation of § 39-13-213(a)(2), § 39-13-106, § 39-13-218 or § 55-10-418, shall be treated the same as a prior conviction for a violation of § 55-10-401.

(p) (1) An offender sentenced to a period of incarceration for a violation of § 55-10-401, shall be required to commence service of such sentence within thirty (30) days of conviction or, if space is not immediately available in the appropriate municipal or county jail or workhouse within such time, as soon as such space is available. If, in the opinion of the sheriff or chief administrative officer of a local jail or workhouse, space will not be available to allow an offender convicted of a violation of § 55-10-401, to commence service of such sentence within ninety (90) days of conviction, such sheriff or administrative officer shall use alternative facilities for the incarceration of such offender. If an offender convicted of a violation of § 55-10-401, prior to July 1, 1995, has not commenced service of the sentence imposed within ninety (90) days of such offender's conviction, the sheriff or administrative officer shall, after notifying the offender, use alternative facilities for the incarceration of such offender. The appropriate county or municipal legislative body shall approve the alternative facilities to be used in such county or municipality.

(2) As used in this subsection (p), "alternative facilities" include, but are not limited to, vacant schools or office buildings or any other building or structure owned, controlled or used by the appropriate governmental entity that would be suitable for housing such offenders for short periods of time on an as-needed basis. A governmental entity may contract with another governmental entity or private corporation or person for the use of alternative facilities when needed and governmental entities may, by agreement, share use of alternative facilities.

(3) Nothing in this subsection (p) shall be construed to give an offender a right to serve a sentence for a violation of § 55-10-401, in an alternative facility or within a specified period of time. Failure of a sheriff or chief administrative officer of a jail to require an offender to serve such a sentence within a certain period of time or in a certain facility or type of facility shall have no effect upon the validity of the sentence.

(q) Notwithstanding any other law to the contrary, in any county having a population of not less than three hundred seven thousand eight hundred (307,800) nor more than three hundred seven thousand nine hundred (307,900), according to the 2000 federal census or any subsequent federal census, upon conviction for a violation of § 55-10-401, § 55-10-415, § 55-10-418 or § 55-50-408, the court shall assess against the defendant a blood alcohol concentration (BAT) test fee to be established by the county legislative body of any county to which this subsection (q) applies in an amount not to exceed fifty dollars (\$ 50.00) for obtaining a blood sample for the purpose of performing a test to determine the

alcoholic or drug content of the defendant's blood pursuant to § 55-10-406 that is incurred by the governmental entity served by the law enforcement agency arresting the defendant. The fee authorized by this subsection (q) shall only be assessed if a blood sample is actually taken from a defendant convicted of any such offenses and the test is actually performed on such sample.

(r) (1) In addition to all other fines, fees, costs and punishments now prescribed by law, an alcohol and drug addiction treatment fee of one hundred dollars (\$ 100) shall be assessed for each conviction for a violation of § 55-10-401.

(2) All proceeds collected pursuant to subdivision (r)(1) shall be transmitted to the commissioner of the department of health for deposit in the special "alcohol and drug addiction treatment fund" administered by such department.

55-10-405. Tests for alcoholic or drug content of blood -- Definitions

As used in this section and §§ 55-10-406 -- 55-10-412, unless the context otherwise requires:

(1) "Drive" means to operate or be in physical control of a motor vehicle;

(2) "Law enforcement officer" means any duly elected or appointed officer of the state of Tennessee or any county or municipal subdivision thereof charged with the conservation of the peace, or with the enforcement and policing of the provisions of title 65, chapter 15;

(3) "License" means any operator's or chauffeur's license, or any other license or permit to drive a motor vehicle, issued under the laws of this state, including a temporary license or instruction permit; the privilege of any person to drive a motor vehicle whether or not such person holds a valid license and any privilege to drive a motor vehicle extended by the state of Tennessee to any person not a resident of this state;

(4) "Motor vehicle" means every vehicle which is self-propelled;

(5) "Test" means any chemical test designed to determine the alcoholic or drug content of the blood. The specimen to be used for such test shall include blood, urine or breath; and

(6) "Vehicle" means every device in, upon or by which any person or property is or may be transported.

55-10-406. Tests for alcoholic or drug content of blood -- Implied consent -- Administration -- Liability -- Refusal to submit to test -- Suspension of license -- Fine -- Mandatory jail or workhouse sentence -- Notice -- Hearing -- Use of analysis as later evidence

(a) (1) Any person who drives any motor vehicle in the state is deemed to have given consent to a test for the purpose of determining the alcoholic or drug content of that person's blood; provided, that such test is administered at the direction of a law enforcement officer having reasonable grounds to believe such person was driving while under the influence of an intoxicant or drug, as defined in § 55-10-405. Any physician, registered nurse, licensed practical nurse, clinical laboratory technician, licensed paramedic or, notwithstanding any other provision of law to the contrary, licensed emergency medical technician approved to establish intravenous catheters, or technologist, or certified and/or nationally registered phlebotomist who, acting at the written request of a law enforcement officer, withdraws blood from a person for the purpose of making such test, shall not incur any civil or criminal liability as a result of the withdrawing of such

blood, except for any damages that may result from the negligence of the person so withdrawing. Neither shall the hospital nor other employer of the previously listed health care professionals incur, except for negligence, any civil or criminal liability as a result of the act of withdrawing blood from any person.

(2) Any law enforcement officer who requests that the driver of a motor vehicle submit to a test pursuant to this section for the purpose of determining the alcoholic or drug content of the driver's blood shall, prior to conducting such test, advise the driver that refusal to submit to such test will result in the suspension of the driver's operator's license by the court and, if such driver is driving on a revoked, suspended or cancelled license, when the person's privilege to do so is cancelled, suspended or revoked because of a conviction for vehicular assault under § 39-13-106, vehicular homicide under § 39-13-213, aggravated vehicular homicide under § 39-13-218, or driving under the influence of an intoxicant under § 55-10-401, that the refusal to submit to such test will, in addition, result in a fine and mandatory jail or workhouse sentence. The court having jurisdiction of the offense for which such driver was placed under arrest shall not have the authority to suspend the license of a driver who refused to submit to the test if the driver was not advised of the consequences of such refusal.

(3) If such person having been placed under arrest and thereafter having been requested by a law enforcement officer to submit to such test and advised of the consequences for refusing to do so, refuses to submit, the test shall not be given, and such person shall be charged with violating this subsection (a). The determination as to whether a driver violated the provisions of this subsection (a) shall be made at the same time and by the same court as the one disposing of the offense for which such driver was placed under arrest. If the court finds that the driver violated the provisions of this subsection (a), except as otherwise provided in this subdivision (a)(3), the driver shall not be considered as having committed a criminal offense; however, the court shall revoke the license of such driver for a period of:

(A) One (1) year, if the person does not have a prior conviction for a violation of § 55-10-401, § 39-13-213(a)(2), § 39-13-218, § 39-13-106, or § 55-10-418 in this state or a similar offense in any other jurisdiction.

(B) Two (2) years, if the person does have a prior conviction for an offense set out in subdivision (A).

(C) Two (2) years, if the court finds that the driver of a motor vehicle, involved in an accident in which one (1) or more persons suffered serious bodily injury violated this subsection (a) by refusing to submit to such a test.

(D) Five (5) years, if the court finds that the driver of a motor vehicle, involved in an accident in which one (1) or more persons are killed, violated this subsection (a) by refusing to submit to such a test. For the purposes of this subdivision (a)(3), "prior conviction" means a conviction for one (1) of the designated offenses, the commission of which occurred prior to the D.U.I. arrest giving rise to the instant implied consent violation. In addition to the consequences set forth in this section, if the court or jury finds that the driver violated the provisions of this subsection (a) while driving on a revoked, suspended or cancelled license, when the person's privilege to do so is cancelled, suspended or revoked because of a conviction for vehicular assault under § 39-13-106, vehicular homicide under § 39-13-213, aggravated vehicular homicide under § 39-13-218 or driving under the influence of an intoxicant under § 55-10-401, such driver commits a Class A misdemeanor and shall be fined not more than one thousand dollars (\$ 1,000) and shall be sentenced to a minimum mandatory jail or workhouse sentence of five (5) days which shall be served consecutively, day for day, and which sentence cannot be suspended.

(4) Any person who violates the provisions of this section by refusing to submit to the test pursuant to subdivision (3) shall be charged by a separate warrant or citation that does not include any charge of violating § 55-10-401 that may arise from the same occurrence.

(b) Any person who is unconscious as a result of an accident or is unconscious at the time of arrest or apprehension or otherwise in a condition rendering that person incapable of refusal, shall be subjected to the test as provided for by §§ 55-10-405 -- 55-10-412, but the results thereof shall not be used in evidence against that person in any court or before any regulatory body without the consent of the person so tested. Refusal of release of the evidence so obtained will result in the suspension of that person's driver license, thus such refusal of consent shall give such person the same rights of hearing and determinations as provided for conscious and capable persons in this section.

(c) A person whose license has been suspended by the court under this section may apply to the court in the county where the person resides or to the court in the county suspending such license for a restricted license. The judge of the court may order the issuance of a restricted license allowing the person to operate a motor vehicle for the purpose of:

- (1) Going to and from and working at the person's regular place of employment;
- (2) Going to and from a court-ordered alcohol safety program;
- (3) Going to and from a college or university in the case of a student enrolled full time in such college or university; and
- (4) Going to and from a scheduled interlock monitoring appointment.

Such order shall state with all practicable specificity the necessary time and places of permissible operation of a motor vehicle. The person may obtain a certified copy of the order, and within ten (10) days after it is issued, present it, along with an application fee of twenty dollars (\$ 20.00), to the department of safety, which shall forthwith issue a restricted license embodying the limitations imposed in the order. After proper application and until such time as the restricted license is issued, a certified copy of the order may serve in lieu of a motor vehicle operator's license. Any restricted license issued under the provisions of this section shall be subject to renewal in the same manner as other motor vehicle operator's licenses.

(d) Nothing in this section shall affect the admissibility in evidence, in criminal prosecutions for aggravated assault or homicide by the use of a motor vehicle only, of any chemical analysis of the alcoholic or drug content of the defendant's blood which has been obtained by any means lawful without regard to the provisions of this section.

(e) Provided probable cause exists for criminal prosecution for the offense of driving under the influence of an intoxicant under § 55-10-401, nothing in this section shall affect the admissibility into evidence in a criminal prosecution of any chemical analysis of the alcohol or drug content of the defendant's blood that has been obtained while the defendant was hospitalized or otherwise receiving medical care in the ordinary course of medical treatment.

55-10-407. Tests for alcoholic or drug content of blood -- Admissibility -- Failure to request test

- (a) Upon the trial of any person charged with a violation of this chapter, the results of any test made of the person so charged shall be admissible in evidence in criminal proceeding.
- (b) Failure of a law enforcement officer to request the administering of a test shall likewise be admissible in evidence in a criminal proceeding.

55-10-408. Tests for alcoholic or drug content of blood -- Presumptions of intoxication and impairment

For the purpose of proving a violation of § 55-10-401(a)(1), evidence that there was, at the time alleged, eight-hundredths of one percent (.08%) or more by weight of alcohol in the defendant's blood shall create a presumption that the defendant's ability to drive was sufficiently impaired thereby to constitute a violation of § 55-10-401(a)(1).

55-10-409. Tests for alcoholic or drug content of blood -- Reports -- Availability of results

(a) The results of any test authorized by §§ 55-10-405 -- 55-10-412 shall be reported in writing by the person making such test, and such report shall have noted on it the time at which the sample analyzed was obtained from the person.

(b) The results of such test shall be made available to the person tested, upon request.

55-10-410. Tests for alcoholic or drug content of blood -- Procurement and processing of samples -- Results -- Additional testing

(a) The procurement of a sample of a person's blood for making a test as provided by §§ 55-10-405 -- 55-10-412, to be considered valid under §§ 55-10-405 -- 55-10-412, shall be performed by a registered nurse, licensed practical nurse, clinical laboratory technologist, clinical laboratory technician, licensed emergency medical technician, licensed paramedic or, notwithstanding any other provision of law to the contrary, licensed emergency medical technician approved to establish intravenous catheters, technologist, or certified and/or nationally registered phlebotomist or at the direction of a medical examiner or other physician holding an unlimited license to practice medicine in Tennessee under procedures established by the department of health.

(b) Upon receipt of a specimen forwarded to the director's office for analysis, the director of the Tennessee bureau of investigation shall have it examined for alcohol concentration or for the presence of narcotic or other drugs, if requested by the arresting officer, county medical examiner, or any district attorney general. The chief medical examiner or the medical examiner's duly appointed representative shall execute a certificate which indicates the name of the accused, the date, time and by whom the specimen was received and examined, and a statement of the alcohol concentration (or presence of drugs) of the specimen.

(c) When a specimen taken in accordance with the provisions of this section is forwarded for testing to the office of the director of the Tennessee bureau of investigation, a report of the results of such test shall be made and filed in that office, and a copy mailed to the district attorney general for the district where the case arose.

(d) The certificate provided for in this section shall, when duly attested by the director of the Tennessee bureau of investigation or the director's duly appointed representative, be admissible in any court, in any criminal proceeding, as evidence of the facts therein stated, and of the results of such test, if the person taking or causing to be taken the specimen and the person performing the test of such specimen shall be available, if subpoenaed as witnesses, upon demand by either party to the cause, or, when unable to appear as witnesses, shall submit a deposition upon demand by either party to the cause.

(e) The person tested shall be entitled to have an additional sample of blood or urine procured and the resulting test

performed by any medical laboratory of that person's own choosing and at that person's own expense; provided, that the medical laboratory is licensed pursuant to title 68, chapter 29.

55-10-411. Tests for alcoholic or drug content of blood -- Construction of provisions -- Authority of other departments

Nothing in the provisions of §§ 55-10-405 -- 55-10-412 shall be construed so as to in any way limit, change, alter, repeal, or amend the provisions of §§ 55-50-303, 55-50-501, or § 55-50-502, nor to limit the power or authority of the department of safety to revoke or suspend a driver's license, permit, or privilege under the provisions of chapter 50 of this title. Nothing in this section shall be construed to prohibit the issuance of a restricted license in accordance with § 55-10-406.

55-10-412. Additional penalties -- Ignition interlock devices

(a) In addition to the punishment hereinbefore provided, the court may, in its discretion:

(1) Prohibit a person convicted as a first offender from driving or operating a motor vehicle for any period of time up to and including six (6) months;

(2) Prohibit a person convicted as a second offender from driving or operating a motor vehicle for any period of time up to and including three (3) years; and

(3) Prohibit a person convicted as a third or subsequent offender from driving or operating a motor vehicle for a period of time up to and including ten (10) years.

(b) Any violation of such judicial prohibition is a Class C misdemeanor.

(c) Nothing in this section shall be construed to prohibit the issuance of a restricted license in accordance with § 55-10-406.

(d) In addition to the penalties authorized for violations of this part, a court may, in its discretion, upon finding a person both financially able to afford an interlock device and also guilty of violating the provisions of §§ 55-10-401 -- 55-10-404, order the person to operate only a motor vehicle which is equipped with a functioning ignition interlock device, and this restriction may continue for a period of up to one (1) year after such person's license is no longer suspended or restricted under the provisions of § 55-10-403. The court shall establish a specific calibration setting no lower than point zero two (.02) nor more than point zero five (.05) blood alcohol concentration at which the ignition interlock device will prevent the motor vehicle from being started and the period of time that the person shall be subject to the restriction. For the purpose of this section, "ignition interlock device" means a device which connects a motor vehicle ignition system to a breath-alcohol analyzer and prevents a motor vehicle ignition from starting if a driver's blood alcohol level exceeds the calibrated setting on the device.

(e) Upon ordering the use of an ignition interlock device, the court shall:

(1) State on the record the requirement for and the period of use of the device, and so notify the department of safety;

(2) Direct that the records of the department reflect:

(A) That the person may not operate a motor vehicle that is not equipped with an ignition interlock device; and

(B) Whether the court has expressly permitted the person to operate a motor vehicle without an ignition interlock device under subdivision (j)(2);

(3) Direct the department to attach or imprint a notation on the driver's license of any person restricted under this section stating that the person may operate only a motor vehicle equipped with an ignition interlock device;

(4) Require proof of the installation of the device and periodic reporting by the person for verification of the proper operation of the device;

(5) Require the person to have the system monitored for proper use and accuracy by an entity approved by the department at least semiannually, or more frequently as the circumstances may require;

(6) Require the person to pay the reasonable cost of leasing or buying, monitoring, and maintaining the device, and may establish a payment schedule therefor.

(f) A person prohibited under this section from operating a motor vehicle that is not equipped with an ignition interlock device may not solicit or have another person attempt to start or start a motor vehicle equipped with such a device. Except as provided in subsection (j), a violation of this subsection (f) is a Class A misdemeanor.

(g) A person may not attempt to start or start a motor vehicle equipped with an ignition interlock device for the purpose of providing an operable motor vehicle to a person who is prohibited under this section from operating a motor vehicle that is not equipped with an ignition interlock device. Except as provided in subsection (j), a violation of this subsection (g) is a Class A misdemeanor.

(h) A person may not tamper with, or in any way attempt to circumvent, the operation of an ignition interlock device that has been installed in a motor vehicle. Except as provided in subsection (j), a violation of this subsection (h) is a Class A misdemeanor.

(i) A person may not knowingly provide a motor vehicle not equipped with a functioning ignition interlock device to another person who the provider of such vehicle knows or should know is prohibited from operating a motor vehicle not equipped with an ignition interlock device. Except as provided in subsection (j), a violation of this subsection (i) is a Class A misdemeanor.

(j) A person who violates subsections (f)-(i) commits a Class A misdemeanor; provided, that penalty shall not apply if:

(1) The starting of a motor vehicle, or the request to start a motor vehicle, equipped with an ignition interlock device is done for the purpose of safety or mechanical repair of the device or the vehicle, and the person subject to the court order does not operate the vehicle; or

(2) The court finds that a person is required to operate a motor vehicle in the course and scope of the person's employment and if the vehicle is owned by the employer, the person may operate that vehicle during regular working hours for the purposes of employment without installation of an ignition interlock device, if the employer has been

notified of such driving privilege restriction and if proof of that notification is with the vehicle. This employment exemption does not apply, however, if the business entity that owns the vehicle is owned or controlled by the person who is prohibited from operating a motor vehicle not equipped with an ignition interlock device.

(k) (1) In addition to the circumstances under which a judge may order the use of an ignition interlock device set out in subsection (d), a judge may order that the vehicle owned or operated by a person or a family member of such person to commit a violation of § 55-10-401, be equipped with an ignition interlock device for all or a portion of the time the driver license of the operator of such vehicle is suspended or restricted pursuant to § 55-10-403, if:

(A) The operator of the vehicle used to violate § 55-10-401, has at least one (1) prior conviction for driving a motor vehicle when such person's privilege to do so is cancelled, suspended or revoked as provided by § 55-50-504; or

(B) The driver license of the operator of such vehicle was cancelled, suspended or revoked at the time of the violation of § 55-10-401.

(2) A judge ordering the use of an ignition interlock device pursuant to this subsection (k) shall follow the same procedures set out in subsections (d) and (e), and the provisions of subsections (f)-(j) shall apply to an interlock device ordered pursuant to this subsection (k).

(3) The provisions of this subsection (k) shall not apply if the vehicle used to commit the violation of § 55-10-401, was, at the time of such violation, leased, rented or stolen.

(l) (1) If a person convicted of a violation of § 55-10-401, has a prior conviction for a violation of § 55-10-401 within the past five (5) years, the court shall order such person to operate only a motor vehicle or motorcycle, after the license revocation period, which is equipped with a functioning interlock device. The court shall also order such device to be installed on all vehicles owned or leased by the person at such person's own expense for a period of six (6) months.

(2) Any person subject to the provisions of subdivision (1) may, solely in the course of employment, operate a motor vehicle or motorcycle, which is owned or provided by such person's employer, without installation of an ignition interlock device, if:

(A) The court expressly permits such operation;

(B) The employer has been notified of such driving privilege restriction; and

(C) Proof of that notification is within the vehicle.

This subdivision (l)(2) shall not apply if such employer is an entity wholly or partially owned or controlled by the person subject to the provisions of this subsection (l).

55-10-414. Child endangerment -- Drunk Driving Child Protection Act

A person who violates § 55-10-401, and who at the time of the offense was accompanied by a child under thirteen (13) years of age:

(1) Commits the offense of child endangerment, a Class A misdemeanor, punishable by a mandatory minimum incarceration of thirty (30) days and a mandatory minimum fine of one thousand dollars (\$ 1,000), which incarceration

and fine shall be in addition to any other incarceration and fine required by law;

(2) Commits the Class D felony of aggravated child endangerment when the child suffers serious bodily injury as a result of the violation of § 55-10-401; and

(3) Commits the Class C felony of especially aggravated child endangerment when the death of the child is the result of the violation of § 55-10-401.

55-10-415. Underage driving while impaired -- Penalties

(a) (1) A person age sixteen (16) or over but under age twenty-one (21) may not drive or be in physical control of an automobile or other motor driven vehicle while:

(A) The alcohol concentration in the person's blood is more than two hundredths of one percent (0.02%);

(B) Under the influence of alcohol;

(C) Under the influence of any intoxicant, marijuana, narcotic drug, or drug producing stimulating effects on the central nervous system; or

(D) Under the combined influence of alcohol and any other drug set out in subdivision (a)(1)(C) to a degree which makes the person's driving ability impaired.

(2) For purposes of this section, "drug producing stimulating effects on the central nervous system" has the same meaning and includes the same items set out in § 55-10-401(b).

(b) The fact that any person who drives while under the influence of narcotic drugs or barbitol drugs is or has been entitled to use such drugs under the laws of this state does not constitute a defense to the violation of this section.

(c) This section establishes the offense of underage driving while impaired for any person age sixteen (16) or over but under age twenty-one (21). The offense of underage driving while impaired is a lesser included offense of driving while intoxicated.

(d) (1) The offense of underage driving while impaired for a person age eighteen (18) or over but under age twenty-one (21) is a Class A misdemeanor punishable only by a driver license suspension of one (1) year and by a fine of two hundred fifty dollars (\$ 250). As additional punishment, the court may impose public service work.

(2) The delinquent act of underage driving while impaired for a person age sixteen (16) or over but under the age of eighteen (18) is punishable only by a driver license suspension of one (1) year and by a fine of two hundred fifty dollars (\$ 250). As additional punishment, the court may impose public service work.

(e) A person age sixteen (16) or over but under the age of eighteen (18) who commits the offense of underage driving while impaired commits a delinquent act.

55-10-416. Open container law

(a) (1) No driver shall consume any alcoholic beverage or beer or possess an open container of alcoholic beverage or beer while operating a motor vehicle in this state.

(2) For purposes of this section:

(A) "Open container" means any container containing alcoholic beverages or beer, the contents of which are immediately capable of being consumed or the seal of which has been broken;

(B) An open container is in the possession of the driver when it is not in the possession of any passenger and is not located in a closed glove compartment, trunk or other nonpassenger area of the vehicle; and

(C) A motor vehicle is in operation if its engine is operating, whether or not the motor vehicle is moving.

(b) (1) A violation of this section is a Class C misdemeanor, punishable by fine only.

(2) For a violation of this section, a law enforcement officer shall issue a citation in lieu of continued custody, unless the offender refuses to sign and accept the citation, as provided in § 40-7-118.

(c) The provisions of this section shall not be construed to prohibit any municipality, by ordinance, or any county, by resolution, from prohibiting the passengers in a motor vehicle from consuming or possessing an alcoholic beverage or beer in an open container during the operation of such vehicle by its driver, or be construed to limit the penalties authorized by law for violation of such an ordinance or resolution.

55-50-501. Mandatory revocation of licenses -- Causes -- Suspension of license until judgment for personal or property damage paid

(a) The department shall forthwith revoke the license of any operator or chauffeur upon receiving a record of such operator's or chauffeur's conviction of any of the following offenses, when such conviction has become final:

(1) Manslaughter or vehicular homicide resulting from the operation of a motor vehicle. The period of revocation in this instance shall extend for the term of the sentence received by the convicted person. If the person is released on parole prior to the end of the sentence, an operator's license may be reissued on petition of the person's probation and parole officer and upon satisfactory completion of a complete licensing examination, subject to the approval of the commissioner;

(2) Driving a motor vehicle while under the influence of an intoxicant, or while under the influence of narcotic drugs, or while under the influence of drugs producing stimulating effects on the central nervous system. For the purpose of this section, "drugs producing stimulating effects on the central nervous system" includes the salts of barbituric acid, also known as malonyl urea, or any compound, derivatives, or mixtures thereof that may be used for producing hypnotic or somnifacient effects, and includes amphetamine, desoxyephedrine or compounds or mixtures thereof, including all derivatives of phenylethylamine or any of the salts thereof, except preparations intended for use in the nose and unfit for internal use;

(3) Any felony in the commission of which a motor vehicle is used;

(4) 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;

(5) Knowingly displaying or causing or permitting to be displayed or having in possession any cancelled, revoked, suspended, fictitious or fraudulently altered operator's or chauffeur's license, or displaying or representing as one's own any operator's or chauffeur's license not issued to such person or using a false or fictitious name in any application for an operator's or chauffeur's license, or knowingly making a false statement, or knowingly concealing a material fact, or otherwise committing a fraud in any such application, or willfully making a false statement to the division under any law relating to the ownership, application or renewal of a motor vehicle operator's or chauffeur's license; or

(6) Conviction, or forfeiture of bail not vacated, upon two (2) charges of reckless driving committed within a period of twelve (12) months.

(b) In the event any final judgment for damages to property or personal injury resulting from the negligent operation of any motor vehicle is recovered, and in the event such final judgment is not fully paid, satisfied and discharged within sixty (60) days from the date the judgment becomes final, the department shall forthwith suspend the license of any chauffeur or operator of the motor vehicle against whom the judgment was rendered; and the license shall not be restored to such operator of the vehicle until such final judgment shall have been fully paid, discharged and satisfied.

(c) The commissioner shall revoke the license of any operator or chauffeur upon receiving the record of such operator's or chauffeur's conviction of the theft of a motor vehicle or any part thereof; and the commissioner shall not consider the convicted person's application for reinstatement for such revoked license until the expiration of the full term of the sentence imposed, whether served during actual imprisonment, probation, parole or suspension. It shall be grounds for the revocation of any such person's parole or probation if such person operates a motor vehicle while such person's license is in revocation pursuant to this subsection (c). It shall be within the discretion of the trial judge who imposed sentence upon the person convicted of the theft of the motor vehicle or any part thereof to reinstate the person's driver license after a reasonable time.

55-50-502. Suspension of licenses -- Hearings -- Period of suspension or revocation -- Surrender of license -- Restricted license -- Operating under license of another jurisdiction prohibited -- Appeal

(a) The department is hereby authorized to suspend the license of an operator or chauffeur upon a showing by its records or other sufficient evidence that the licensee:

(1) Has committed an offense for which mandatory revocation of license is required upon conviction; provided, that in the event of a conviction resulting from the offense, the time of mandatory revocation shall be counted from the date upon which the driver license was received by the department or the circuit court clerk;

(2) Has contributed as a driver in any accident resulting in the death or personal injury of another or serious property damage;

(3) Has been convicted with such frequency of serious 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. For purposes of this subdivision (a)(3), no conviction of exceeding the speed limit in a state other than Tennessee shall be considered by the department unless such conviction was for exceeding the lawful speed in such other state by more

than five miles per hour (5 mph). This five miles per hour (5 mph) allowance shall not apply in marked school zones;

- (4) Is an habitually reckless or negligent driver of a motor vehicle;
 - (5) Is incompetent to drive a motor vehicle;
 - (6) Has permitted an unlawful or fraudulent use of such license;
 - (7) Has committed an offense in another state which if committed in this state would be grounds for suspension or revocation;
 - (8) Has been finally convicted of any driving offense in any court and has not paid or secured any fine or costs imposed for that offense;
 - (9) Has failed to appear in any court to answer or to satisfy any traffic citation issued for violating any statute regulating traffic. No license shall be suspended pursuant to this subdivision (a)(9) for failure to appear in court on or failure to pay a parking ticket or citation or for a violation of § 55-9-603. Any request from the court for suspension under this subdivision (a)(9) must be submitted to the department of safety within six (6) months of the violation date. No suspension action shall be taken by the department unless such request is made within six (6) months of the violation date. Prior to suspending the license of any person as authorized in this subsection (a), the department shall notify the licensee in writing of the proposed suspension and, upon the licensee's request, shall afford the licensee an opportunity for a hearing to show that there is an error in the records received by the department; provided, that such request is made within thirty (30) days following the notification of proposed suspension or cancellation. Failure to make such request within the time specified shall without exception constitute a waiver of such right; or
 - (10) Is under eighteen (18) years of age and has withdrawn either voluntarily or involuntarily or has failed to maintain satisfactory academic progress from a secondary school as provided in § 49-6-3017; provided that no municipal law enforcement officer is authorized to seize the license of an operator or chauffeur for a traffic offense in violation of a municipal ordinance or a traffic offense as provided in chapter 8 of this title.
- (b) (1) The department is hereby authorized to cancel any operator's or chauffeur's license upon determining that the licensee was not entitled to the issuance thereof hereunder, or that the licensee failed to give the required or correct information in the application or committed any fraud in making such application.
- (2) Upon such cancellation, the licensee must surrender the license so cancelled to the department.
- (c) (1) The department, upon suspending or revoking a license, shall require that such license be surrendered to and be retained by the department. Prior to the reissuance of any license revoked because of a conviction of driving while under the influence of liquor or an intoxicating drug, after a second or subsequent conviction, the department shall require the owner to submit evidence that the owner has completed a program of alcohol or drug abuse education, or has completed treatment by a physician board certified or eligible in psychiatry or a licensed psychologist certified with competence in clinical psychology; or, at a facility licensed by the department of mental health and developmental disabilities to provide such treatment. Certification of the psychiatrist or clinical psychologist or facility licensed by the department of mental health and developmental disabilities under this section is not to be construed as a prediction of future behavior but merely certification of completion of the program.

(2) When such examination, as required by this subsection (c), is administered by a state supported mental health facility, such facility and medical doctors or doctors of psychology employed by such facility who administer such examinations within the course and scope of such doctor's authority under the statute, shall be immune from tort liability for the proper dissemination of any report or findings to the department of safety which results from such examination; provided, that this immunity shall not extend to any other person, institution, or other member of the private sector, not employed or attached to a state supported mental health facility.

(3) The trial judge of the court wherein the trial for the offense of operating a vehicle under the influence of alcohol or an intoxicating drug is pending may order the issuance of a restricted license allowing the person so arrested to operate a motor vehicle for the purpose of going to and from and working at such person's regular place of employment. A Tennessee resident, whose operator's license has been suspended because of an arrest in another jurisdiction on a charge of operating a motor vehicle while under the influence of an intoxicating liquor or a narcotic drug, may apply to a judge of any court of the county of such person's residence having jurisdiction to try charges for a restricted motor vehicle operator's license.

The judge may order the issuance of a restricted license, if based upon the records of the department of safety:

(i) The violation resulting in the person's present conviction for driving under the influence of an intoxicant occurred on or after July 1, 2000; and

(ii) The person does not have a prior conviction for a violation of § 39-13-106, § 39-13-213(a)(2), or § 39-13-218 in this state, or a similar offense in another state; and

(iii) The person does not have a prior conviction for a violation of § 55-10-401 or § 55-10-418 within ten (10) years of the present violation, in this state or a similar offense in another state.

The trial judge may issue such order allowing the person so convicted to operate a motor vehicle for the limited purposes of going to and from:

(i) And working at such person's regular place of employment;

(ii) A court-ordered alcohol safety program;

(iii) A college or university in the case of a student enrolled full time in such college or university; and

(iv) A scheduled interlock monitoring appointment.

If the violation resulting in the person's conviction for D.U.I. occurred prior to July 1, 2000, the law in effect when such violation occurred shall govern the person's eligibility for a restricted motor vehicle operator license.

Such order shall state with all practicable specificity the necessary times and places of permissible operation of a motor vehicle. The person so arrested may obtain a certified copy of the order and within ten (10) days after it is issued present it, together with an application fee of sixty-five dollars (\$ 65.00), to the department, which shall forthwith issue a restricted license embodying the limitations imposed in the order. After proper application and until such time as the restricted license is issued, a certified copy of the order may serve in lieu of a motor vehicle operator's license. Any restricted license issued under the provisions of this section shall be subject to renewal in the same manner as other motor vehicle operator's licenses.

(4) Where a nonresident whose license has been suspended or revoked by any other state subsequently becomes a bona fide resident of this state, and where the person has been granted a restricted license by the other state if such triggering offense would under the laws of Tennessee provide for the issuance of a restricted driver license upon petition to a judge of the court of general sessions, or its equivalent, for the county wherein the person resides, the judge may, in the judge's discretion, order the issuance of a restricted motor vehicle operator's license allowing the person to operate a motor vehicle for the purpose of going to and from and working at such person's regular place of employment during the

mandatory revocation/suspension period. Such orders shall state with all practicable specificity the necessary times and places of permissible operation of a motor vehicle. The person may obtain a certified copy of the order and within thirty (30) days after it is issued present it, together with an application fee of sixty-five dollars (\$ 65.00), to the department, which shall forthwith issue a restricted license embodying the limitations imposed in the order. After proper application and until such time as the restricted license is issued, a certified copy of the order may serve in lieu of a motor vehicle operator's license. Any restricted license issued under the provisions of this subdivision (c)(4) shall be subject to renewal in the same manner as the motor vehicle operator's license.

(d) (1) The provisions of this subsection (d) apply statewide.

(2) A person whose license has been suspended, pursuant to the provisions of subdivision (a)(8) or (9), subject to the approval of the court, may pay any local fines or costs, arising from such convictions or failure to appear in any court, by establishing a payment plan with the local court or the court clerk of the jurisdiction.

(3) The department is hereby authorized to reinstate a person's driving privileges when such person provides the department with certification from the local court, or court clerk of the jurisdiction that such person has entered into a payment plan with the local court or the court clerk of the jurisdiction and has satisfied all other provisions of law relating to the issuance and restoration of a driver license.

(4) The department shall, upon notice of such person's failure to comply with any payment plan established pursuant to this subsection (d), suspend the license of such person. Persons who default under this subsection (d) shall not be eligible for any future payment plans under this subsection (d). The department shall notify the person in writing of the proposed suspension, and upon request of such person within thirty (30) days of such notification, shall provide the person an opportunity for a hearing to show that such person has, in fact, complied with the local court's or the court clerk's payment plan. Failure to make such request within thirty (30) days of receipt of notification shall, without exception, constitute a waiver of such right.

(5) Any person who has defaulted on a pay plan to pay fines and costs for suspension actions taken under subdivisions (a)(8) or (9), shall not be eligible to participate in a payment plan, nor shall the department of safety have the authority to accept a payment plan as a condition precedent to the restoration of driving privileges.

(6) Any county which participates in the payment plan authorized by the provisions of this subsection (d) shall pay to the state any expense required to be paid for state implementation of this subsection (d). Such payment shall be divided pro rata among the counties to which this subsection (d) applies. Such payment shall be made prior to the implementation by the county of the provisions of this subsection (d).

(e) (1) Any resident or nonresident whose operator's or chauffeur's license or right or privilege to operate a motor vehicle in this state has been suspended or revoked as provided in this chapter shall not operate a motor vehicle in this state under a license, permit, or registration certificate issued by any other jurisdiction or otherwise during such suspension or after such revocation until a new license is obtained when and as permitted under this chapter.

(2) The privilege of driving a motor vehicle on the highways of this state given to a nonresident hereunder is subject to suspension or revocation by the department in like manner and for like cause as an operator's or chauffeur's license issued hereunder may be suspended or revoked.

(3) The department is further authorized, upon receiving a record of the conviction in this state of a nonresident driver

of a motor vehicle of any offense under the motor vehicle laws of this state, to forward a certified copy of such record to the motor vehicle administrator in the state wherein the person so convicted is a resident.

(4) The department is authorized to suspend or revoke the license of any resident of this state or the privilege of a nonresident to drive a motor vehicle in this state upon receiving notice of the conviction of such person in another state of an offense therein which, if committed in this state, would be grounds for the suspension or revocation of the license of an operator or chauffeur.

(f) (1) The department shall not suspend a driver license or privilege to drive a motor vehicle on the public highways for a period of more than six (6) months for a first offense nor more than one (1) year for a subsequent offense, except as permitted under § 55-50-504, unless in any case an order of a court provides for a longer period of suspension. At the end of the period for which a license has been suspended, the department is authorized, in its discretion, to require a reexamination of the licensee as a prerequisite to the reissuance of such license.

(2) Any person whose license is suspended for driving under the influence of drugs or intoxicants, or for refusal to submit to a blood test under § 55-10-406, shall have the period of suspension computed from the time that such person's driver license was actually taken from such person's possession, and the period of license suspension shall begin to run from that point until the license is returned.

(3) Any person whose license or privilege to drive a motor vehicle on the public highways has been revoked shall not be entitled to have such license or privilege renewed or restored unless the revocation was for a cause which has been removed, except that after the expiration of one (1) year or the period of suspension prescribed by a court from the date on which the revoked license was surrendered to and received by the department, such person may make application for a new license as provided by law, but the department shall not issue a new license unless and until it is satisfied after investigation of the character, habits and driving ability of such person that it will be safe to grant the privilege of driving a motor vehicle on the public highways. No license which has been revoked, on account of the conviction of the licensee for murder or manslaughter resulting from the operation of a motor vehicle, shall be reissued except as provided in § 55-50-501(a)(1).

(4) Where the revocation involved is the first revocation of the license or privilege of such person, such application for a new license may be made after the expiration of six (6) months from the date on which the revoked license was surrendered and received by the department. No license which has been revoked on account of the conviction of the licensee for murder or manslaughter resulting from the operation of a motor vehicle shall be reissued except as provided in § 55-50-501(a)(1).

(g) When considering the suspension of a driver license, the department may take into account offenses committed by that driver outside of Tennessee and reported to the department only if such offenses would, under the laws of Tennessee, be considered grounds for suspension in this state. If the offenses would be grounds for suspension in the state of conviction, but not in Tennessee they shall be disregarded by the department.

(h) Drivers of commercial motor vehicles shall have their licenses suspended for violations and for the length of time specified in § 55-50-405.

(i) (1) The department shall establish a method by which any person who makes application for or who holds a commercial driver license may elect an alternate address to which any suspension notices shall be mailed.

(2) At least two (2) times per month during two (2) different weeks of such month, the department shall make available for public inspection a list of persons whose commercial driver license has been suspended.